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state funds raised by general taxation, or it may apportion burden among municipalities or create tax districts either directly by legislature or by delegated authority, and propriety of delegation is a state matter not reviewable by this court. <i>O' Neill v. Leamer</i>	244
Section 32, Criminal Code, is not unconstitutional as an interference with or encroachment on powers of States. <i>United States v. Barnow</i>	74
Suit against officers of State about to proceed wrongfully to enforce unconstitutional state statute to complainant's injury not suit against State. <i>Truax v. Raich</i>	33
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IV. Contract Clause.

Act of April 21, 1902, renewing restrictions on alienation of Choctaw allotments under act of July 1, 1902, does not impair obligation of contracts with Choctaws and Chickasaws. <i>Williams v. Johnson</i>	414
Legislative charter for drainage district not a contract that laws it was created to administer will not be changed. <i>Houck v. Little River District</i>	254
Taxes imposed by New Jersey upon lessee of Morris Canal Company not unconstitutional impairment of obligation of contract: <i>Morris Canal Co. v. Baird</i>	126

V. Commerce Clause.

Power of Congress over foreign commerce not affected by fact that article imported is to be used for purpose under state control. <i>Weber v. Freed</i>	325
Tennessee statute requiring foreign corporations to take specified steps before maintaining action is not unconstitutional as interference with interstate commerce. <i>Interstate Amusement Co. v. Albert</i>	560
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VI. Fifth Amendment.

Congress has power to adopt basis of distribution between corporations carrying current indebtedness exceeding capital and those that do not; and provision in Corporation Tax Act limiting interest deductions to an amount of the indebtedness not exceeding capital is not an arbitrary classification denying due process of law under Fifth Amendment. <i>Anderson v. Forty-Two Broadway Co.</i>	69
Act of April 21, 1902, renewing restrictions on alienation of Choctaw allotments under act of July 1, 1902, does not violate Fifth Amendment. <i>Williams v. Johnson</i>	414

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Shirley Amendment to Food and Drugs Act not unconstitutional under Fifth Amendment for uncertainty. *Seven Cases v. United States* 510

VII. Fourteenth Amendment.

1. *Generally*: General provisions of Fourteenth Amendment embody fundamental conceptions of justice and do not prevent State from adopting public policy to meet special exigencies, such as establishment of drainage districts, nor do other provisions of Constitution. *O'Neill v. Leamer* 244

Fourteenth Amendment does not interfere with discretionary power of States to raise revenue by imposing taxes and assessments, and may impose them for improvements already made even though proceeds be used for other public purposes without violating equal protection and due process provisions. *Wagner v. Baltimore* 207

Drainage District Statutes of Nebraska of 1905 and 1909 not denial of due process of law or denial of equal protection of law. *O'Neill v. Leamer* 244

Federal Constitution does not require all public acts to be done in town meeting. *Bi-Metallic Co. v. Colorado* 441

Order of Colorado Board of Equalization increasing valuation of all taxable property in Denver, valid under state law, not violative of Fourteenth Amendment because opportunity to be heard not given city or taxpayers. *Id.*

2. *Due process of law*: Appellate court may, without violating Fourteenth Amendment, correct interlocutory decision on a first appeal when case again comes up with same parties and whether it can be done in particular case is state matter and decision of highest court controlling here. *Moss v. Ramey* 538

Due process of law not denied by Oklahoma in disregard § 5039, Rev. Laws Oklahoma, making provisions of state statute applicable to trials by court without jury. *Porter v. Wilson* 170

Allowance by court, after testimony in, of amendment bringing case specifically under Employers' Liability Act, not denial of due process of law. *Seaboard Air Line Ry. v. Koennecke* 352

Taxation without jurisdiction denies due process of law and this rule applies to assertion of authority on the part of the State to exact license tax for acts done beyond its sphere of control. *Provident Savings Assn. v. Kentucky* 103

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- Imposing taxes on premiums collected on life insurance policies of residents of Kentucky in pursuance of statute of that State, after company ceased doing business therein, unconstitutional denial of due process of law. *Id.*
- No abuse of legislative power violating due process provision when no disproportion between assessment fixed and benefits conferred as in case of Maryland Statutes of 1906 and 1908 imposing special tax on property in Baltimore for street paving. *Wagner v. Baltimore* 207
- Where classification of property to be improved and assessment are fixed by statute and specified sum fixed ratably by area, notice and hearing not necessary and due process clause not violated in absence of abuse of power. *Id.*
- Due process not violated by State fixing basis of taxation for governmental outlay by statute directly or by appropriate legal proceeding. *Houck v. Little River District* 254
- So as to initial tax of twenty-five cents an acre for preliminary work under Missouri drainage statute. *Id.*
- Assessments for public work may be laid either as to position, area, frontage, market value or estimated benefits without violating due process if power not abused. *Houck v. Little River District* 254
- Action of local administrative body arbitrarily including land not possibly benefited in drainage district solely for purpose of obtaining revenue therefrom amounts to deprivation of property without due process of law. *Myles Salt Co. v. Iberia Drainage District* 478
- Legislature may constitute drainage districts and define boundaries or delegate authority to local administrative bodies and unless palpably arbitrary and plain abuse of power does not deny due process. *Id.*
- Section 14, Labor Law 1909, New York, not unconstitutional as denying due process of law to any person because it provides that only citizens of United States be employed on public works and that preference be given to citizens of New York. *Heim v. McCall* 175
- Crane v. New York* 195
- Statute of South Carolina making delivering carrier responsible for damages to foods on through bills of lading of intrastate shipments not voluntarily received does not deprive delivering carrier of property without due process of law. *Atlantic Coast Line v. Glenn* 388
- Mere breach of contract on part of state officers does not

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- amount to taking property without due process of law. *Manila Investment Co. v. Trammell*. 31
- Power arbitrarily exerted in imposing burden without an advantage of any kind amounts to confiscation and violates due process of law. *Myles Salt Co. v. Iberia Drainage District*. 478
- State has very broad powers over municipalities and may exercise them in many ways giving rise to inequalities between municipalities without violating due process provision. *Stewart v. Kansas City*. 14
- Statute requiring counties to reimburse cities of first class but not of other classes for rebates allowed for prompt payment of taxes not unconstitutional under due process provision. *Id.*
- Tennessee statute, requiring foreign corporations to take specified steps before maintaining action, not denial of due process of law. *Interstate Amusement Co. v. Albert*. 560
- Proper police regulation prohibiting nuisances not denial of due process law even though affecting use of property or subjecting owner to expense in compliance. *Northwestern Laundry v. Des Moines*. 486
- Des Moines Smoke Abatement Ordinance not invalid as to due process. *Id.*
- State may prescribe duties of hotel keepers regarding fires and police statute expressing rules in general does not lack due process of law. *Miller v. Strahl*. 426
- Statute of 1913 of Nebraska requiring keepers of hotels having over fifty rooms to keep night watchmen and awaken guests in case of fire not unconstitutional under due process clause. *Id.*
- Under the law of Washington Territory the property escheated and passed under decree of probate court to county in which it was located and that decree, being in accord with valid law by a court of jurisdiction in a proceeding *in rem* with opportunity to be heard, was valid, could not be attacked collaterally and, there having been opportunity to be heard, it did not deny due process of law. *Christianson v. King County*. 356
3. *Equal protection of the law*: Conditions justify distinctions and classifications. *Hadacheck v. Los Angeles*. 394
- Ordinance applying equally to all within terms not denial equal protection law if reasonable basis for classification

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even though other businesses might have been included.

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State police statute otherwise valid not denial equal protection because it includes some municipalities and omits others. *Id.*

Municipal ordinance cannot be attacked as denying equal protection of law when contention based on disputable considerations of classification and conditions not judicially determinable. *Hadacheck v. Los Angeles*. 394

State has very broad powers over municipalities and may exercise them in many ways giving rise to inequalities between municipalities without violating equal protection provision. *Stewart v. Kansas City* 14

Statute requiring counties to reimburse cities of first class but not of other classes for rebates allowed for prompt payment of taxes not unconstitutional under equal protection provision. *Id.*

In order to protect citizens of United States in employment against non-citizens States may not require employers to employ only specified percentage of aliens—such a statute—as in Arizona of December 14, 1914, denies aliens equal protection of laws even though allowing employment of some aliens. *Truax v. Raich* 33

Alien admitted to United States under Federal law has privilege of entering and abiding in any State and as inhabitant of State is entitled under Fourteenth Amendment to equal protection of law as “any person within the jurisdiction of the United States” and this includes right to earn living which was purpose of Amendment to secure. *Id.* Section 14, Labor Law 1909 of New York does not deny equal protection of the law because it provides that only citizens of United States shall be employed on public works and preference be given to citizens of New York. *Heim v. McCall* 175

Crane v. New York 195

Police power may be exerted under proper conditions to declare under particular circumstances and in particular localities specified businesses, such as brick making, which are not nuisances *per se* to be nuisances in fact and law, as in Los Angeles Ordinance—without violating Fourteenth Amendment—but *quære* as to simply digging clay for brick-making elsewhere. *Hadacheck v. Los Angeles*. 394

Fact that ordinance does not prohibit brick making business

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in all sections of city, as in Los Angeles ordinance, does not make it unconstitutional as denying equal protection of law. *Id.*

State may, by direct legislation or through authorized municipalities, declare emission of dense smoke in populous neighborhoods nuisance and restrain, and unless arbitrary, such regulations not violation of Fourteenth Amendment.

Northwestern Laundry v. Des Moines 486

Des Moines Smoke Abatement Ordinance not invalid under Iowa statute or Fourteenth Amendment as to equal protection. *Id.*

Nebraska statute of 1913, requiring keepers of hotels having over fifty rooms to keep night watchmen and awaken guests in case of fire, not unconstitutional under equal protection clause. *Miller v. Strahl* 426

Police statute, otherwise valid, not unconstitutional as denying equal protection of law because only applicable to hotels having more than fifty rooms: classification has reasonable basis. *Id.*

On record in this case it does not appear that Washington Workmen's Compensation Act is unconstitutional as denying equal protection of the law. *Northern Pacific Ry. v. Meese* 614

VIII. Fifteenth Amendment.

Drainage District Statute of Nebraska of 1905 and of 1909 not unconstitutional under Fifteenth Amendment. *O'Neill v. Leamer* 244

IX. Sixth Amendment.

Shirley Amendment to Food and Drugs Act not unconstitutional under Sixth Amendment as preventing laying definite charge thereunder. *Seven Cases &c. v. United States* 510

X. Eminent Domain.

In Eminent Domain proceedings an award of one dollar does not deprive owner of property without due process of law if court recognized right to substantial damage if any but found no damages shown. *Provo Bench Canal Co. v. Tanner* 323

XI. Privileges and Immunities.

Under the Constitution every person born in the United States is a citizen thereof. *Mackenzie v. Hare* 299

Section 14, Labor Law 1907, New York, not unconstitutional as denying privileges and immunities to foreigners because it provides that only citizens of United States shall

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be employed on public works and preference given to citizens of New York. <i>Heim v. McCall</i>	175
<i>Crane v. New York</i>	195

XII. Retroactive Legislation.

State statute fixing basis of taxation for governmental outlay not unconstitutional as retrospective as to drainage districts formed after its passage. <i>Houck v. Little River District</i>	254
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XIII. Supreme Law of the Land.

Section 14, Labor Law 1909, New York, providing that only citizens of United States be employed on public works and preference given to citizens of New York not unconstitutional as violating treaty with Italy of 1871. <i>Heim v. McCall</i> . .	175
<i>Crane v. New York</i>	195

CONSTRUCTION:

General Principles: Remedial statute should be construed to embrace remedies it was intended to afford, but words should not be so extended as to destroy express limitations and cause it to accomplish results not intended. <i>Northern Pacific Railway v. Concannon</i>	382
Provisions exempting from taxation strictly construed under rule that such exemptions cannot be transferred. <i>Morris Canal Co. v. Baird</i>	126
Whether statute repealing former statute but reënacting identical matter affects validity of ordinances established under earlier statute a state matter. <i>Northwestern Laundry v. Des Moines</i>	486
Where penalty provisions separable court will not determine validity in suit to enjoin order in advance of attempt to enforce. <i>Phoenix Ry. v. Geary</i>	277
Court not precluded from construing a document because its construction is affected by facts not open to dispute. <i>Steinfeld v. Zeckendorf</i>	26
Of Federal Statutes: In construing a statute, the court will regard it as more rational to assume Congress dealing with present affairs than reopening finished transactions. <i>White v. United States</i>	608
Rule that repeal of statute does not extinguish liability incurred thereunder not applicable where Congress simply changes tribunal and does not except pending litigation. <i>Hallowell v. Commons</i>	506
Criminal statute, such as § 240, Crim. Code, applicable alike to foreign and interstate commerce, should not be construed	

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- so as to render it futile as to the former. *United States v. Freeman* 117
- Provision in Citizenship Act of March 2, 1907, is explicit and circumstantial that any American woman marrying foreigner takes nationality of husband and it would transcend judicial power to insert limitations or conditions upon disputable considerations. *Mackenzie v. Hare* 299
- Phrase in list of disabilities in § 1 of alien Immigration Act to be read as generically similar to others before and after. *Geglow v. Uhl* 3
- The Post Road Act of 1866 must be construed and applied in light of existing conditions and with a view to effectuate the purpose for which it was enacted. *Essex v. New England Telephone Co.* 313
- Right of way granted by act of 1875 is neither mere easement nor fee simple but limited fee made under implied condition of reverter in case of non-user. *Rio Grande Ry. v. Stringham* 44
- Judgment granting railroad company right of way under Right of Way Act of 1875 uses terms with same meaning as used in Act. *Id.*
- Even if statute declares transaction void for want of certain enumerated forms, party for whose protection requirement is made may waive it, and void then means voidable; and so as to Rev. Stat., § 3744, requiring officers of United States to reduce contracts to writing. *United States v. N. Y. & Porto Rico S. S. Co.* 88
- While not conclusive, construction of act of Congress relative to Indian allotments in course of actual administration by Secretary of Interior is entitled to great weight and should not be overruled without cogent reason. *La Roque v. United States* 62
- Of State Constitutions and Statutes:** Federal courts must accept construction of state statute deliberately adopted by highest court of State. *Northern Pacific Ry. v. Meese* 614
- This court accepts decision of highest state court that action of trial court does not violate state constitution. *Porter v. Wilson* 170
- Uniform acts adopted in various States to be construed so as effectuate object of uniformity expressed in act and not construed as offshoot of local law. *Commercial Bank v. Canal Bank* 520
- Uniform acts adopted in various States relating to commer-

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cial affairs so as to unify as far as possible under dual system of government commercial law and give effect to mercantile view of documents of title, and this principle should be given effect in construing the acts. *Id.*

South Carolina statute making delivering carrier responsible for damages, having been construed by highest court of State as not requiring carrier to accept on through bills of lading from other carriers, constitutionality of a statute requiring acceptance and making delivering carrier responsible for damages on other lines not determined. *Atlantic Coast Line v. Glenn* 388

Holding by highest court of State that State Workmen's Compensation Act, established comprehensive plan for relief of workmen included therein regardless of fault, is exclusive notwithstanding it did not expressly repeal statute giving right of action for death, is binding on Federal courts; and so held as to Washington statute. *Northern Pacific Ry. v. Meese* 614

Of Contracts: See **Contracts**.

CONTRACTS:

Contract to produce result does not bring means to provide it into the contract. *United States v. Normile* 344

Claim of contractor for extra compensation disallowed. *Id.*

Effect of outbreak of war on price of labor not a basis for extra compensation. *Id.*

Construction of contract with Government for construction of dam. *Id.*

Object of Rev. Stat., § 3744, providing that Secretaries of War, Navy and Interior must sign contracts reduced to writing, is to furnish protection to United States and not for private individual and other party bound if he executed contract even if government only executed. *United States v. N. Y. & Porto Rico S. S. Co.* 88

Even if statute declares transaction void for want of certain enumerated forms, party for whose protection requirement is made may waive it and void then means voidable; and so as to Rev. Stat., § 3744, requiring officers of United States to reduce contracts to writing. *Id.*

Court not precluded from construing a document because its construction is affected by facts not open to dispute. *Steinfeld v. Zeckendorf* 26

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Complete on execution and delivery without notice of acceptance. <i>U. S. Fidelity Co. v. Riefler</i>	17
Effect of express contract made for purpose of interstate commerce must be determined in light of Act to Regulate Commerce. <i>Cleveland & St. Louis Ry. v. Dettlebach</i>	588
Interstate carrier is not relieved from making adequate money compensation for unpaid balance of contract for services fully performed before the passage of a t. <i>N. Y. Central R. R. v. Gray</i>	583
Where allegations of bill show mere breach of contract on part of state officers there is no real and substantial controversy as to effect of Federal Constitution and District Court does not have jurisdiction on that ground. <i>Manila Investment Co. v. Trammell</i>	31

See **Constitutional Law, IV.**

CONTRIBUTORY NEGLIGENCE. See **Employers' Liability Act; Negligence; Safety Appliance Act.**

CORPORATIONS:

Charters: Express provision in legislative charter limiting exemption from taxation to such property as is possessed and enjoyed by corporation for its own actual and necessary use must be strictly construed under rule that transfers do not carry such exemptions. *Morris Canal Co. v. Baird* 126

Taxes imposed by New Jersey upon lessees of Morris Canal Company not unconstitutional impairing of obligation of contract, as exemption in charter applied only while property was in actual occupancy and use of original corporation. *Id.* After property exempted under charter during actual possession and use of exempted company is leased the exemption no longer applies; so held even though subject to State's right of purchase and of reversion to State. *Id.*

The fact that State has reserved power to buy property of corporation exempted from taxation on property in actual use and that property eventually reverts to State, does not affect construction, that exemption does not pass to lessee. *Id.*

A transfer even under legislative authority of all property and franchises of one corporation to another does not vest latter with freedom from exercise of governmental power which former enjoyed under its charter. *Id.*

Regulation: State may restrict foreign corporation from

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doing business within State so long as interstate commerce not burdened. *Interstate Amusement Co. v. Albert*. 560

Corporation of another State carrying on business in Tennessee other than interstate commerce not deprived of property without due process, nor is interstate commerce interfered with, by Tennessee statute requiring foreign corporation to file charter and take other specified steps before maintaining action in State. *Id.*

Whether the acts done within a State by a foreign corporation amount to doing business so as to subject the corporation to tax laws of the State is a Federal question and this court can review the decision of the state court in that respect. *Provident Savings Ass'n v. Kentucky*. 103

See **Corporation Tax Act; Practice and Procedure; Taxes and Taxation.**

CORPORATION TAX ACT:

Act of 1909 was not income tax but excise on conduct of business in corporate capacity, measured by reference to the income as prescribed by the act. *Anderson v. The Forty-Two Broadway Co.* 69

Operations of corporations having indebtedness exceeding capital may be conducted more for benefit of creditors than stockholders, and tax contributions for expense of government should be admeasured with this fact in view; and so held where capital was \$600 and bonded debt \$4,750,000. *Id.*

Where current indebtedness of corporation exceeds paid up capital stock, deductions for interest in determining net income is limited to amount of such capital. *Id.*

Congress has power to adopt basis of distribution between corporations carrying current indebtedness exceeding capital and those that do not, and provision in Corporation Tax Act limiting interest deductions to an amount of the indebtedness not exceeding capital is not an arbitrary classification denying due process of law under Fifth Amendment. *Id.*

COUNTY OFFICERS. See **Public Officers.**

COURT OF CLAIMS:

Court of Claims was established to consider right of claimants to recover against the United States and its findings of fact on matters within its jurisdiction should be conclusive unless Congress otherwise provides. *Cramp v. United States* 221

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Court of Claims has jurisdiction to reform contract for purpose of determining whether the claim if established is a valid one against the United States. *Id.*

Finding of Court of Claims that there was no mutual mistake in executing releases and that the instrument expressed intention of United States although claimant had mistaken its legal rights and that such misapprehension did make the release a subject for reformation, is binding on this court. *Id.*

COURTS:

Courts cannot, where will of Congress plainly appears, allow substantive rights to be impaired under name of procedure.

Atlantic Coast Line v. Burnette 199

Courts are not concerned with public policy of State in determining how public work shall be done for it and its municipalities. *Heim v. McCall* 175

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Courts not precluded from construing a document because its construction is affected by facts not open to dispute.

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Allowance, after testimony, of amendment bringing case specifically under Employers' Liability Act, not beyond discretionary power of court or denial due process law. *Seaboard Air Line Ry. v. Koennecke* 352

Provision in Citizenship Act of March 2, 1907, is explicit and circumstantial that any American woman marrying foreigner takes nationality of husband and it would transcend judicial power to insert limitations or conditions upon disputable considerations. *Mackenzie v. Hare* 299

See **Jurisdiction; Practice and Procedure; Removal of Causes.**

CREEK INDIANS. See **Indians.**

CRIMINAL CODE:

Section 32 is not unconstitutional as an interference with or encroachment on powers of States. *United States v. Barrow* 74

Section 240 construed. *United States v. Freeman* 117

CRIMINAL LAW:

Criminal statute applicable alike to shipments in interstate and foreign commerce will not be so construed as to render it futile as to the latter; but, if its words will permit, should

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be construed so as to reach both classes and accomplish object of its enactment. *United States v. Freeman* 117

Words "to ship" in § 240, Criminal Code, is not used in sense of "deliver for shipment" making offense completed on delivering, but refers to continuing act; and district courts of State into which goods are shipped have jurisdiction. *Id.* Prohibition in § 240, Criminal Code, against shipping in interstate commerce packages of intoxicating liquor not marked as prescribed is continuing act, performance of which is begun when package is delivered to carrier and completed when it reaches destination. *Id.*

Offense of falsely personating officer or employé of United States under Criminal Code, § 32, is complete on the personation and demanding and obtaining money, even if person defrauded be not financially injured. *United States v. Barnow* 74

Prohibition in § 32, Criminal Code, against false personation of officer or employé of United States not confined to false personation of particular person but covers any false assumption or pretense of office or employment if done with intent to defraud and accompanied by specified acts. *Id.*

United States has power to prohibit false personation of its officers or false assumption of being an officer or holding a non-existent office, and legislation to that end does not interfere with or encroach on powers of States and § 32, Criminal Code, is not unconstitutional. *Id.*

Although statute may only render employer liable to prosecution if it operates directly upon employment of employé and compel his discharge the latter has no adequate relief if the statute is unconstitutional. *Truax v. Raich* 33

While generally equity has no jurisdiction over criminal laws, it may, when necessary to safeguard property rights, restrain criminal prosecutions under unconstitutional statutes. *Id.*

CURTIS ACT. See **Indians.**

CUSTOMS:

Procedure for review by this court of judgments of Circuit Courts of Appeals in customs cases is by appeal and not by writ of error. *Gsell v. Insular Customs Collector* 93

Writ of error is inapplicable to review customs cases involving facts to determine classification of merchandise, and judgments of Supreme Court of Philippine Islands in cus-

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toms cases must be reviewed by appeal and not writ of error. *Id.*

See **Philippine Islands.**

DAMAGES. See **Eminent Domain.**

DEBTOR AND CREDITOR. See **Bankruptcy.**

DECREES. See **Judgments and Decrees.**

DELEGATION OF POWER:

Legislature may constitute drainage districts and define boundaries or delegate authority to local administrative bodies and unless palpably arbitrary and plain abuse power does deny due process. *Myles Salt Co. v. Iberia Drainage District*..... 478

Propriety of delegating authority by legislature to a court in the matter of formation of drainage districts is local question. *O'Neill v. Leamer*..... 244

See **Territories.**

DEMURRAGE. See **Charter Party.**

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DEPORTATION. See **Philippine Islands.**

DEPOSITIONS:

To prove claims against bankrupt's estate. General Order No. 21 amended 623

DES MOINES:

Smoke abatement ordinance not invalid under Iowa statutes or Fourteenth Amendment to Constitution. *North-western Laundry v. Des Moines*..... 486

DISCRETION OF COURTS. See **Practice and Procedure.**

DISTRICT COURT. See **Jurisdiction, IV.**

DIVERSITY OF CITIZENSHIP. See **Jurisdiction; Removal of Causes.**

DIVORCE:

In appeals from territorial courts this court follows and sustains application of local law to facts made by courts below unless constrained to contrary by sense of clear error and so held in divorce case from Philippine Islands. *De Villanueva v. Villanueva*..... 293

Jurisdiction of this court; amount in controversy. *Id.*

DRAINAGE DISTRICTS:

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- Legislature may constitute drainage districts and define boundaries or delegate authority to local administrative bodies, and unless palpably arbitrary and plain abuse of power, does not deny due process. *Myles Salt Co. v. Iberia Drainage District*. 478
- Neither general provisions of the Fourteenth Amendment nor other provisions of the Constitution prevent States from adopting public policy and establishing drainage districts. *O'Neill v. Leamer*. 244
- Propriety of legislature delegating authority to courts in regard to formation of drainage districts is matter of local law. *Id.*
- Judgment of state court entitled to highest respect in regard to local matters such as necessity for drainage districts. *Id.*
- Statutes of Nebraska of 1905 and 1909 establishing drainage districts and delegating authority to courts and appropriating property by eminent domain, not unconstitutional under Fourteenth or Fifteenth Amendments. *Id.*
- If plaintiff in error unsuccessfully contends in state court that property appropriated for drainage district was essentially for private purpose, without due process of law, this court has jurisdiction under § 237, Jud. Code. *Id.*
- Action of local administrative body arbitrarily including land not possibly benefited in drainage district solely for purpose obtaining revenue therefrom amounts to deprivation of property without due process of law. *Myles Salt Co. v. Iberia Drainage District*. 478

See **Taxes and Taxation**.

DUE PROCESS OF LAW. See **Constitutional Law, VII.**

EMINENT DOMAIN:

- May be exercised to establish drainage districts. *Houck v. Little River District*. 254
- On condemnation proceedings, adaptability to purpose for which land can be most profitably used to be considered only so far as public would consider it had land been offered for sale in absence of exercise of eminent domain. Owner is entitled to value of property taken at time but not what tribunal at a later date thinks a purchaser would have been wise to give. *New York v. Sage*. 57
- Owner is entitled to rise in value before the taking not caused by the expectation of that event. *Id.*

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Owner is not entitled to add value resulting from union of his lot with other lots if union was solely the result of the exercise of eminent domain. *Id.*

In eminent domain proceedings an award of one dollar does not deprive owner of property without due process of law if court recognized right to substantial damage, if any, but found no damages shown. *Provo Bench Canal Co. v. Tanner* 323

In condemnation proceedings in New York although maps made of parcels and notices posted, the proceeding is not commenced until petition is filed and a non-resident purchasing before that can remove case into Federal court. *New York v. Sage*. 57

EMPLOYERS' LIABILITY ACT:

Scope and operation: Where injury was sustained while employé was engaged in interstate commerce, responsibility of carrier governed by Employers' Liability Act, which is exclusive and supersedes state law, and it is error to submit case to jury as though state law controlled. *C., R. I. & P. Ry. v. Wright* 548

Employers' Liability Act as amended in 1910 expressly provides state court has jurisdiction of actions thereunder, and no such case removable merely for diverse citizenship. *Southern Ry. v. Lloyd*. 496

Car from another State merely delayed in State of destination and finally reaching destination not thereby withdrawn from interstate commerce and operation of act. *Great Northern Ry. v. Otos* 349

An employé distributing cars from interstate train and clearing track for another interstate train is engaged in interstate commerce. *Seaboard Air Line Ry. v. Koennecke*. 352

To recover under act carrier must be engaged in interstate commerce at time of injury and person injured then employed therein. *Shanks v. Delaware, L. & W. R. R.* 556

Exclusive operation of Employers' Liability Act over its subject to exclusion of state statutes conclusively established by decisions of this court. *Chicago & Rock Island Ry. v. Devine* 52

Right of action under: Under Employers' Liability Act action lies for injury or death resulting in whole or in part from negligence of carrier. *Kanawha Ry. v. Kerse* 576

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Employé of an interstate carrier which maintains machine shop to repair locomotives used in interstate commerce who is injured while moving machinery to repair such locomotives is not engaged in interstate commerce at the time even though at other times he may be so engaged, and he cannot maintain action under Employers' Liability Act. *Shanks v. Del., Lack. & West. R. R.* 556

Unless contentions are wholly frivolous, court has jurisdiction under § 237, Jud. Code, to review judgment of state court in action under Employers' Liability Act; but in this case contentions are frivolous under Rule 6, § 5. *Chicago & Rock Island Ry. v. Devine* 52

Negligence of master: A railroad does not guarantee or warrant absolute safety to employes under all circumstances but is bound to exercise care which exigency reasonably demands in furnishing proper roadbed and facilities. *Reese v. Phila. & Reading Ry.* 463

Failure to exercise care constitutes negligence, but mere existence of number of tracks near to each other in a terminal where public streets are utilized does not support inference of negligence. *Id.*

To leave switch obstructed in such manner as to endanger lives of brakemen on cars is clearly negligence, and existence of obstruction for considerable time is presumptive evidence of notice. *Kanawha Ry. v. Kerse* 576

Contributory negligence and assumption of risk: Distinction between assumption of risk and contributory negligence formerly of little consequence when both led to same result are more important under the Employers' Liability Act, as former is complete bar and latter simply mitigates damages. *Seaboard Air Line v. Horton*. 595

Whether continuing to use defective apparatus instead of another which might be unsafe amounts to contributory negligence is question for jury. *Id.*

Authorities differ, and this court has not yet decided whether continuing of employment on promise of reparation in presence of imminent danger that no ordinarily prudent man would confront amounts to assumption of risk or contributory negligence. *Id.*

Reasonable reliance by employé on promise of reparation and continuance in employment not contributory negligence as matter of law and question in this case properly submitted to jury. *Id.*

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Trial court did not err in refusing to hold as matter of law that no ordinarily prudent man would rely on promise to repair glass of water gauge on engine. *Id.*

Where employer promises reparation of defect known to employé, and latter relies on promise and continues employment, he does not, during reasonable time, assume risk unless no ordinarily prudent man would under such circumstances rely on such promise. *Id.*

Employé knowing of defect arising from employers' negligence and appreciating risk and continuing employment without objection or promise of reparation assumes risk. *Id.*

Knowledge by experienced brakemen of obstruction over track necessarily imports risk and, in absence of objection on his part or promise of reparation by employer, assumption of risk. *Kanawha Ry. v. Kerse* 576

Although trial court erred in refusing request as to employé's assumption of risk based on hypothesis of his knowledge of obstruction causing injury, if jury specifically negated hypothesis error not ground for reversal. *Id.*

Employer not prejudiced by instructions given under state law in regard contributory negligence more favorable than though given under Federal law and not therefore denied Federal right. *Chi., Rock Isl. & Pac. Ry. v. Wright* 548

Releases: Act has no application to releases given to those who are not employers. *Chicago & Alton R. R. v. Wagner* 452

Where one of two joint feors, who is the employer, obtains a release from the injured employé which is invalid under § 5 of the Employers' Liability Act, the court does not deny the other joint tort feor a Federal right by holding that the release is not valid as to it beyond setting off the amount paid. *Id.*

Pleading and practice: Allowance by court, after testimony, of amendment bringing case specifically under Employers' Liability Act not beyond discretionary power of court or denial of due process of law. *Seaboard Air Line Ry. v. Koennecke* 352

The possibility that local train might drop all interstate cars and take only local cars is too remote to withdraw a case under the Employers' Liability Act from the jury. *Id.*

On record in this case court should not have withdrawn case

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from jury on question of negligence or assumption of risk.
Id.

Error not prejudicial affords no ground for reversal and if employer not prejudiced by difference between Federal Employers' Liability Act and state acts as in Nebraska judgment not reversed. *Chi., Rock Isld. & Pac. Ry. v. Wright* 548

Trial court entered non-suit where there was no evidence that railroad failed to furnish safe place for employé who was killed while leaning out from his engine. *Reese v. Phila. & Reading Ry.* 463

Although trial court erred in refusing to charge that knowledge by employé of defects amounted to assumption of risk, if request was based on hypothesis of knowledge and jury found specifically employé did not have such knowledge there is no ground for reversal. *Kanawha Ry. v. Kerse* 576

Congress, within its sphere, is paramount authority over States, and courts cannot, where will of Congress plainly appears, allow substantive rights to be impaired under name of procedure. *Atlantic Coast Line v. Burnette* 199

Even though not pleaded, if defendant insists and answer admits that an action based on Employers' Liability Act has been brought too late, action cannot be maintained. *Id.* In action based on act, trial court properly submitted to jury question of whether injured employé was or was not engaged in interstate commerce and refused to charge he was not so engaged. *Pennsylvania Co. v. Donat* 50

When questions of negligence and the like brought here simply because arising under the act and involving no new principles, this court confines itself to summary statement of results. *Seaboard Air Line Ry. v. Koennecke* 352

Writ of error to review judgment in this case founded on Employers' Liability Act frivolous and affirmed under Rule 6, § 5. *Pennsylvania Co. v. Donat* 50

Evidence: Burden of proof of assumption of risk by employé is on employer and unless evidence shows such assumption court does not err in submitting question to jury. *Kanawha Ry. v. Kerse* 576

Evidence as to rules in regard to speed of engines and other facts justified submission of question of negligence to jury. *Chi., Rock Isld. & Pac. Ry. v. Wright* 548

Where there was testimony that plaintiff was engaged in interstate commerce, and court charged that burden of proof

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was on plaintiff to show it, question properly left to jury.

Southern Railway v. Lloyd 496**EMPLOYMENT.** See **Labor; Master and Servant.****EQUAL PROTECTION OF THE LAW.** See **Constitutional Law, VII.****EQUITY:**

General powers of Federal courts sitting in equity can only be exerted in cases otherwise within their jurisdiction.

Briggs v. United Shoe Co. 48Only the United States can maintain bill in equity for annulment of patent on ground of procurement by fraud. *Id.*Suit for royalties reserved on sale of patent rights is not suit arising under patent law and District Court does not have jurisdiction in equity under act of February 9, 1883. *Id.*While generally equity has no jurisdiction over criminal laws it may, when necessary to safeguard property rights, restrain criminal prosecutions under unconstitutional statutes. *Truax v. Raich* 33Alien is entitled to right to earn livelihood and continue employment unmolested, and is entitled to protection in equity in absence of adequate remedy at law. *Id.*Although statute may only render employer liable to prosecution if it operates directly upon employment of employé and compel his discharge, the latter has no adequate remedy at law and is entitled to equitable relief if the statute is unconstitutional. *Id.*Where valuation method is so unwarranted by law as to amount either to fraud or gross mistake equivalent to fraud on constitutional rights of person taxed, equity should enjoin enforcement of the tax. *Johnson v. Wells Fargo* 234If collection of tax of previous year was enjoined on same ground as attempt to enforce similar tax for succeeding year it is continuing violation of constitutional rights affording ground for equitable relief. *Id.*Where continual violations of constitutional rights are made on same ground which courts have decided, equity should give relief by enjoining enforcement of unconstitutional tax. *Id.*

Allowance of equitable relief question of state policy and if state court treats merits of suit in which equitable relief is sought as legitimately before it this court will not attempt

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to decide whether state court could have thrown case out.	
<i>Bi-Metallic Co. v. Colorado</i>	441.
Where owner of goods clothes another with such indicia of ownership that <i>bona fide</i> purchaser is enabled to take title, rule that earlier of equal equities better not applicable as later equities are based on action of earlier holder who is estopped thereby. <i>Commercial Bank v. Canal Bank</i>	520
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ESCHEATS:

Escheat for failure of heirs has always been subject of legislation in American commonwealths. <i>Christianson v. King County</i>	358
Provisions for escheat for failure of heirs have proper relation to matters embraced in law establishing probate courts as in statutes of Washington Territory which are not invalid because title of probate act not broad enough to cover escheats. <i>Id.</i>	
Where territory has authority to establish rule as to escheat it has power to establish tribunals with jurisdiction and procedure and if other proceedings are established, as in Washington, by probate court decree, office found is not necessary. <i>Id.</i>	
As an organized political division of United States, a Territory only possesses such powers as Congress confers upon it and a legislature cannot provide for escheat unless authorized, but authority to legislate on all rightful subjects of legislation includes escheats, as in case of Organic Act of Washington Territory. <i>Id.</i>	
Prohibition in Organic Act of Washington of 1853 against interference with primary disposal of soil had reference to public lands of United States and did not relate to escheat of land for failure of heirs. <i>Id.</i>	
Where court of competent jurisdiction in a proceeding <i>in rem</i> under valid statute declares property has escheated as there are no heirs, the decree binds all the world including heirs who failed to appear. <i>Id.</i>	
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Trial court entered non-suit where there was no evidence
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& Reading Ry. 463
Burden of proof of assumption of risk by employé is on em-
ployer and, unless sustained, court does not err in submitting
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To operate switch so obstructed as to endanger lives of
brakemen is evidence of negligence and continued existence
of obstruction presumption of notice to carrier. *Id.*
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hibition prohibited. *Weber v. Freed* 325

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voluntarily renounce it even though Congress may not com-
pel renunciation; and marriage of American woman with
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gress by act of 1868, now Rev. Stat., § 1999, explicitly declared right of expatriation to be the law. *Id.*

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Whether the acts done within a State by a foreign corporation amount to doing business so as to subject the corporation to tax laws of the State, is a Federal question and this court can review the decision of the state court in that respect. *Provident Savings Ass'n v. Kentucky.* 103

Whether responsibility of interstate carrier as warehouseman of goods from another State not called for in 48 hours after arrival is measured by valuation in bill of lading is Federal question. *Cleveland & St. Louis Ry. v. Dettlebach.* 588

While action of police jury in Louisiana establishing drainage district may not be attacked except on special averment fraud, one not charging fraud or attacking statute itself may attack law as administered for including property if not benefited by drainage system, thus raising a Federal question under § 237, Jud. Code. *Myles Salt Co. v. Iberia Drainage District.* 478

Conclusion of state court, supported by record, that no issue was made in, or submitted to, trial court as to assumption of risk and therefore, under state practice, not presented on appeal, does not deny any Federal right. *Southern Ry. v. Lloyd.* 496

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tially for private purpose without due process of law this court has jurisdiction under § 237, Jud. Code. *O'Neill v.*

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Where allegations of bill show mere breach of contract on part of state officers there is no real and substantial controversy as to Constitution or effect of Federal Constitution and District Court does not have jurisdiction on that ground.

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Whether statute repealing former statute but reenacting identical matter affects validity of ordinances established under earlier statute is a state matter. *Northwestern Laundry v. Des Moines* 486

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constitutional rights of person taxed, equity should enjoin enforcement of the tax. *Johnson v. Wells Fargo* 234
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Subsequent legislation excluded seamen engaged in trade between Hawaiian Islands from the exemption from attachment of wages provided by § 4536. *Inter-Island Navigation Co. v. Byrne* 459
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 This court will not presume that highest court of Hawaiian Islands did not know its own powers or decide in accordance with law of Kingdom. *Id.*

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Homestead rights in land are creation of the States in which lands are situated; and validity and operation of mortgages thereon are determined by laws of State as construed by courts of the State. *Moody v. Century Savings Bank* 374
 Under laws of Iowa a homestead may only be sold under valid mortgage for deficiency remaining after exhausting other property covered by same mortgage. *Id.*
 Right to insist on exemption of homestead under Iowa statute except from sale for deficiency is not personal to owners of homestead but may be asserted by anyone holding under the mortgage, nor can they prejudice a transfer of their interest in this right. *Id.*

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Under Hospital Corps Act members of corps required to perform for stated pay all duties properly incident to conduct of hospital including maintaining telegraph and telephone office. *United States v. Ross* 530

Whether maintenance of telephone and telegraph stations in military hospital necessary is for judgment of department, and in absence of clear abuse courts will not overrule judgment. *Id.*

HOTELS:

A person engaging in business subject to regulation by the State, such as hotel keeping, undertakes to fulfil obligations imposed on such business. *Miller v. Strahl*. 426

State may prescribe duties of hotel keepers regarding fires; and police statute expressing rules in general does not lack due process of law. *Id.*

Police statute, otherwise valid, not unconstitutional as denying equal protection of law because only applicable to hotels having more than fifty rooms, classification has reasonable basis. *Id.*

Statute of 1913 of Nebraska requiring keepers of hotels having over fifty rooms to keep night watchmen and awaken guests in case of fire not unconstitutional under due process or equal protection clauses. *Id.*

HUSBAND AND WIFE:

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<i>Quere</i> , whether grantee of Indian can avail of right, if any, to assert unconstitutionality of act of Congress affecting rights of the Indians or whether such grantee can urge rights of tribe to which grantor belongs. <i>Id.</i>	
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By passing act June 25, 1910, vesting power to determine legal heirs allottee Indians in Secretary Interior, Congress evinced change of public policy and its opinion as to better manner of preserving rights of Indians. <i>Id.</i>	
Since passage of act June 25, 1910, District Court without jurisdiction of action to determine heirs of allottee Indian dying during trust period. <i>Id.</i>	
Congress by act of June 25, 1910, restored to Secretary of Interior power taken from him by Acts 1901 and 1904 to determine legal heirs of allottee Indians dying during restriction period. <i>Id.</i>	
Under act June 25, 1910, Secretary of Interior has power to ascertain legal heirs Omaha Indian dying during restriction period of allotment under act August 7, 1882, and decision final. <i>Id.</i>	
Section 5, act of February 28, 1891, amending General Allotment Act of February 8, 1887, had no effect on right of inheritance as to Creek Indians in Indian Territory, as that territory was excepted. <i>Porter v. Wilson</i>	170
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- tive to Indian allotments in course of actual administration by Secretary of Interior is entitled to great weight and should not be overruled without cogent reason. *La Roque v. United States*. 62
- Nelson Act for allotments to Chippewas on White Earth Indian Reservation contemplated only selections on part of living Indians. There was no displacement of usual rule that incidents of tribal membership and membership are terminated by death. *Id.*
- The fact that the Nelson Act provided for a census of the Indians is not conclusive that the allotments were to be made to all Indians included in the census. *Id.*
- The act of April 23, 1904, limiting and defining authority of Secretary of Interior in regard to cancelling patents for trust allotments does not restrict or define power or jurisdiction of court in that respect. *Id.*
- Act of March 3, 1891, establishing six year limitation for actions by United States to annul patents is part of public land laws and does not refer to suits to annul patents for Indian allotments. *Id.*
- Act of May 2, 1890, § 380, legalizing Indian marriages related only to those theretofore, and not to those thereafter contracted. *Porter v. Wilson*. 170

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- Temporary injunction should not be granted under Jud. Code, § 266, against enforcement of order of state railroad commission unless bill and affidavits clearly show arbitrary or confiscatory action and overcome presumption of reasonableness. *Phoenix Ry. v. Geary*. 277
- Proper to grant where there are conflicting opinions of different Circuit Courts of Appeal in patent cases on question of infringement and identity of patents. *Fireball Tank Co. v. Commercial Co.* 156
- Rights of telegraph company under Post Road Act which would be violated by threatened arbitrary action of municipality, may be protected by equity, but injunction must not prevent municipality from subjecting location and operation of lines to reasonable regulations. *Essex v. New England Telephone Co.* 313

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Duty to resort to adequate remedies provided by state law cannot be escaped by assuming even if resorted to wrong would not have been righted. *Mellon Co. v. McCafferty* . . . 134
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 Employer not prejudiced by instructions given under state law in regard to contributory negligence more favorable than though given under Federal law and not therefore denied Federal right. *Chi., Rock Isld. & Pac. Ry. v. Wright* 548

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 Car from another State merely delayed in State of destination and finally reaching destination not thereby withdrawn from interstate commerce. *Great Northern Ry. v. Otos* . . . 349
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The possibility that a local train might drop all cars and take only local cars is too remote to withdraw a case under the Employers' Liability Act from the jury. *Id.*

Employé of an interstate carrier who is injured while moving machinery in machine shop is not engaged in interstate commerce. *Shanks v. Del., Lack., & West. R. R.* 556

Under Act to Regulate Commerce as amended by the Hepburn Act of 1906 transportation embraces all facilities connected with shipment, including storage after arrival. *Cleveland & St. Louis Ry. v. Dettlebach.* 588

Words "to ship" as used in § 240, Criminal Code, mean continuous act and not mere act of shipment, and District Court of district into which liquor is shipped has jurisdiction of offense. *United States v. Freeman.* 117

Prohibition in § 240, Criminal Code, against shipping in interstate commerce packages of intoxicating liquor not marked as prescribed is continuing act, performance of which is begun when package is delivered to carrier and completed when it reaches destination. *Id.*

2. *Scope of Commerce Act:* Effect of express contract made for purpose of interstate commerce must be determined in light of Act to Regulate Commerce. *Cleveland & St. Louis Ry. v. Dettlebach.* 588

Anti-pass provision of the Hepburn Act of 1906 applies to common carriers by railroad in interstate commerce with respect to transportation within State as part of an interstate journey. *N. Y. Central R. R. v. Gray.* 583

While anti-pass provision of Hepburn Act operates upon agreement made for exchange of transportation before passage of act for anything else than money and specific performance cannot be required, interstate carrier is not relieved from making adequate money compensation for unpaid balance of contract for services fully performed before passage of act. *Id.*

3. *Power of Congress over:* Congress not to be denied exercise of constitutional authority over interstate commerce because necessary means have quality of police regulations. *Seven Cases &c. v. United States.* 510

Shirley Amendment to Food and Drug Act, making misbranding include false and fraudulent statements as to curative power, within power of Congress to regulate interstate commerce. *Id.*

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- in interstate commerce, responsibility of carrier governed by Employers' Liability Act which is exclusive and supersedes state law; and it is error to submit case to jury as though state law controlled. *C., R. I. & P. Ry. v. Wright*. 548
- Whether responsibility of interstate carrier as warehouseman of goods from another State not called for in 48 hours after arrival is measured by valuation in bill of lading, is Federal question. *Cleveland & St. Louis Ry. v. Dettlebach*. 588
4. *Power of States over*: State may restrict foreign corporation from doing business within State so long as interstate commerce not burdened. *Interstate Amusement Co. v. Albert*. 560
5. *Burdens on and interference with*: Tennessee statute requiring foreign corporations to take specified steps before maintaining action, not interference with interstate commerce. *Interstate Amusement Co. v. Albert*. 560
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7. *Tariffs*: Valuation in bill of lading of goods shipped in interstate commerce and limitation of carrier's liability made for purpose of obtaining lower rate is, under Carmack Amendment, valid and binding on shipper and applies to carrier as such while goods are in transit and as warehouseman while holding goods after arrival. *Cleveland & St. Louis Ry. v. Dettlebach*. 588
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in which it was located and that decree, being in accord with valid law by a court of jurisdiction in a proceeding *in rem* with opportunity to be heard, was valid, could not be attacked collaterally, and there having been opportunity to be heard it did not deny due process of law. *Id.*

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- Postponing consideration of a motion to dismiss until the hearing on the merits does not amount to a decision that the court has power to review the judgment. *Cerecedo v. United States.* 1
- Mandamus from this court is proper remedy if a Federal judge refuses to present sealed evidence after litigant shows it is material. *Ex parte Uppercu.* 435
- The act of April 23, 1904, limiting and defining authority of Secretary of Interior in regard to cancelling patents for trust allotments does not restrict or define power or jurisdiction of court in that respect. *La Roque v. United States* 62
- In condemnation proceedings in New York although maps made of parcels and notices posted, the proceeding is not commenced until petition is filed and a non-resident purchasing before that can remove case into Federal court. *New York v. Sage* 57

II. Jurisdiction of this court.

1. *Over judgments of Circuit Court of Appeals:* Judgments of Circuit Court of Appeals in bankruptcy proceedings reviewable under act of 1915 only by certiorari. *Central Trust Co. v. Lueders.* 11
- Mere formal statement that cause of action arises under

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Constitution and laws of United States not sufficient to give this court jurisdiction to review judgment of Circuit Court of Appeals otherwise final under § 128, Jud. Code. It must appear suit really involves substantial controversy upon which determination depends. *Norton v. Whiteside* 144

Averments in bill as to general intent of Congress to secure free navigation of rivers in Northwest Territory not sufficient to give jurisdiction under § 241, Jud. Code, in absence of specific legislation involved in case otherwise final under § 128. *Id.*

Where it sufficiently appears from the bill jurisdiction does not depend on diverse citizenship only but controversy involves Constitution or act of Congress, decision Circuit Court of Appeals not final, and this court has jurisdiction under § 241, Jud. Code. *Christianson v. King County* 356

A proceeding brought by a trustee in bankruptcy asserting title to lands, reciting encumbrances and asking that they be sold and proceeds marshaled and liens be ascertained and in which all parties appear, is a controversy in bankruptcy and this court has jurisdiction to review the judgment of the Circuit Court of Appeals. *Moody v. Century Savings Bank* 374

2. *Over judgments of territorial courts:* Review of judgments of Supreme Court of Philippine Islands is regulated by Act of July 1, 1902, under which this court has jurisdiction if statute of United States such as Philippine Tariff Act is involved. *Gsell v. Insular Customs Collector* 93

Even where this court may review findings of fact, as in appeals from Philippine Islands involving amount in controversy it will not reverse findings made by both courts below in absence of clear error. *De Villanueva v. Villanueva* 293
Has jurisdiction in divorce action if affidavits supporting appeal show value of community property of jurisdictional amount. *Id.*

Section 35, Foraker Act, superseded by § 244, Judicial Code. *Elzaburu v. Chaves* 283

3. *Over judgments of state courts:* This court has no jurisdiction under § 237, Jud. Code, to review judgment of state court determining duty of county officer under the law of the State. *Stewart v. Kansas City* 14

Unless contentions are wholly frivolous court has jurisdiction under § 237 to review judgment of state court in action under Employers' Liability Act, but in this case contentions are

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frivolous under Rule 6, § 5. <i>Chicago & Rock Island Ry. v. Devine</i>	52
Judgment of intermediate appellate state court not final judgment under § 237, Jud. Code, if highest court of State has discretionary power of review which has been invoked and refused. <i>Stratton v. Stratton</i>	55
Usual practice in States where discretionary power exists in highest appellate courts to review judgments of intermediate appellate courts is to invoke its exercise before bringing writ of error from this court. <i>Id.</i>	
Whether the acts done within a State by a foreign corporation amount to doing business so as to subject the corporation to tax laws of the State is a Federal question and this court can review the decision of the state court in that respect. <i>Provident Savings Ass'n v. Kentucky</i>	103
When decree of state court rests on independent non-Federal ground broad enough to sustain it, irrespective of Federal right asserted, this court has no jurisdiction under Jud. Code, § 237. <i>Mellon v. McCafferty</i>	134
If plaintiff in error unsuccessfully contended in state court that property appropriated for drainage district was essentially for private purpose and was taken without due process of law this court has jurisdiction under § 237, Jud. Code. <i>O'Neill v. Leamer</i>	244
Although court may have charged jury there was a presumption rebuttable by proof that damage occurred on line of delivering carrier, if it excluded testimony offered by carrier to show that damage did not occur on its line on ground that statute made delivering carrier liable, judgment does not rest on independent ground and this court can review under § 237, Jud. Code, on constitutional question whether statute denied due process of law. <i>Atlantic Coast Line v. Glenn</i>	388
While an issue remaining open on remanding case may be one arising under state law which should primarily be disposed of by state court; this court has ultimate authority to review the decision on such question to extent necessary for enforcement of Federal rights involved. <i>Northern Pacific Ry. v. Concannon</i>	382
Where state court has not passed on whether ordinance exceeds legislative grant to municipality this court will. <i>Northwestern Laundry v. Des Moines</i>	486
4. <i>In general</i> : The power of this court cannot be enlarged or its duty affected regarding moot case by stipulation of	

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parties or counsel. *United States v. Hamburg-American Co.* 466

This court cannot pass on questions which have become moot as inevitable legal consequence of flagrant European War. *Id.*

III. Of Circuit Court of Appeals.

Judgments of Circuit Court of Appeals in bankruptcy proceedings final except on certiorari under act of 1915. *Central Trust Co. v. Lueders* : 11

Decision of Circuit Court of Appeals not final where controversy involves Constitution or act of Congress. *Christianson v. King County.* 356

Judgment otherwise final under § 128, Jud. Code, cannot be reviewed under § 24, Jud. Code, if statement that cause of action arises under Constitution and law of United States is merely formal. *Norton v. Whiteside* 144

IV. Of District Courts.

Of suit by railway company against members of state commission to enjoin enforcement of order if bill and affidavits clearly show arbitrary or confiscatory action and overcome presumption of reasonableness. *Phoenix Ry. v. Geary* 277

Since passage of act June 25, 1910, District Court has no jurisdiction of action to determine heirs of allottee Indian dying during trust period. *Hallowell v. Commons.* 506

More than one complainant each having tax of forty dollars assessed against him cannot unite and maintain jurisdiction even if the aggregate of the claims exceeds \$3,000—the amount in controversy cannot be so made up. *Rogers v. Hennepin County.* 583

Jurisdictional amount involved in suits for injunction to abate nuisance or continuing trespass tested by value of object to be gained by complainant and not mere expense of abatement; and if value of business is over \$3,000, District Court has jurisdiction. *Glenwood Light Co. v. Mutual Light Co.* 121

District Court of district into which liquor is shipped has jurisdiction over offenses under § 240, Criminal Code. *United States v. Freeman.* 117

Suit for royalties reserved on sale of patent rights is not suit arising under patent law and District Court does not have jurisdiction on that ground under § 24, Judicial Code, nor in this case under Rev. Stat., § 4915 or 4918, or in equity under act of February 9, 1883. *Briggs v. United Shoe Co.* 48

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Where allegations of bill show mere breach of contract on part of state officers there is no real and substantial controversy as to effect of Federal Constitution and District Court does not have jurisdiction on that ground. *Manila Investment Co. v. Trammell*. 31

District Court has jurisdiction of action to enjoin enforcement of order of state railroad commission where bill shows arbitrary or confiscatory action. *Phoenix Ry. v. Geary* . . . 277

V. Of Interstate Commerce Commission. See **Interstate Commerce Commission.**

VI. Of Court of Claims.

Rule that Court of Claims has not jurisdiction of actions founded on torts based on policy imposed by necessity that governments not liable for unauthorized wrongs inflicted by officers on citizens even though in discharge of official duties. *Basso v. United States*. 602

Congress has wisely reserved to itself the right to give relief where claim founded on torts of officer of United States. *Id.* *Schillinger v. United States*, 155 U. S. 163, subsisting authority for rule that Court of Claims has not jurisdiction of claim founded on wrongful act of officer of United States. *Id.*

VII. Of State Courts.

Highest court of State ultimate judge of extent of its jurisdiction; unless Federal right denied its decision conclusive here. *Dayton Coal Co. v. Cincinnati Ry*. 446

Failure to resort to existing ample administrative remedies under state law to review assessment is non-Federal ground sufficient to sustain judgment of state court refusing to enjoin collection of tax. *Mellon v. McCafferty*. 134

Employers' Liability Act as amended in 1910 expressly provides state court has jurisdiction of actions thereunder, and no such case removable merely for diverse citizenship. *Southern Ry. v. Lloyd*. 496

Where territory has authority to establish rule as to escheat it has power to establish tribunals with jurisdiction and procedure; and if other proceedings are established, as in Washington, by probate court, decree of office found is not necessary. *Christianson v. King County*. 356

Decree of probate court of King County, Washington, sufficient to sustain escheat as being within its jurisdiction. *Id.*

JURY AND JURORS:

Whether continuing to use defective apparatus instead of

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another which might be unsafe amounts to contributory negligence question for jury. *Seaboard Air Line v. Horton* 595

Reasonable reliance by employ  on promise of reparation and continuance in employment not contributory negligence as matter of law and question in this case properly submitted to jury. *Id.*

Where in case under Employers' Liability Act, there was testimony that plaintiff was engaged in interstate commerce, and court charged that burden of proof was on plaintiff to show it, question properly left to jury. *Southern Ry. v. Lloyd*. 496

Burden of proof as to assumption of risk on employer and unless sustained question properly submitted to jury. *Kanawha v. Kerse*. 576

See **Employers' Liability Act; Instructions to Jury.**

KANSAS:

Statute requiring counties to reimburse cities of first class but not of other classes for rebates allowed for prompt payment of taxes not unconstitutional under due process or equal protection provision of Fourteenth Amendment. *Stewart v. Kansas City*. 14

Contracts of conditional sale must be recorded. *Bailey v. Baker Ice Co.* 268

KENTUCKY:

Imposing taxes on premiums collected on life insurance policies of residents of Kentucky in pursuance of statute of that State after company ceased doing business unconstitutional denial due process of law. *Provident Savings Ass'n v. Kentucky* 103

KNOWLEDGE. See **Assumption of Risk; Judicial Knowledge.**

LABOR:

Alien is entitled to earn livelihood and continue employment unmolested and is entitled to protection in equity in absence of adequate remedy at law; and unjustifiable interference of third parties is actionable even if employment is at will. *Truax v. Raich* 33

Alien admitted to United States under Federal law has privilege of entering and abiding in any State and as inhabitant of State is entitled under Fourteenth Amendment to equal protection of law as "any person within the juris-

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diction of the United States " and this includes right to earn living which was purpose of amendment to secure. *Id.*

Although statute may only render employer liable to prosecution if it operates directly upon employment of employé and compel his discharge the latter has no adequate relief if the statute is unconstitutional. *Id.*

Although employment is at will of employer and employé it is not at will of third parties. *Id.*

The power to control immigration—to admit or exclude aliens—is vested in Federal Government and the States may not deprive admitted aliens of right to earn living or require employers only to employ citizens. *Id.*

In order to protect citizens of United States in employment against non-citizens States may not require employers to employ only specified percentage of aliens—such a statute, as in Arizona of December 14, 1914, denies aliens equal protection of laws even though allowing employment of some aliens. *Id.* Section 14, Labor Law 1909, New York, providing that only citizens of United States be employed on public works and that preference be given to citizens of New York, not unconstitutional. *Heim v. McCall* 175

Crane v. New York 195

Neither a municipality nor one contracting therewith, nor a taxpayer on its behalf, can assert proprietary rights of an individual against the State in determining who shall be employed on public works authorized by the State. *Id.*

State may establish as public policy, with which courts are not concerned, what class of labor shall be employed on its public works. *Id.*

LACHES:

A right may be waived or lost by failure to assert it at the proper time. *Atlantic Coast Line v. Burnette*. 199

LAND GRANTS. See Public Lands; Northern Pacific Railway.**LAW AND FACT:**

Decisions of immigration officers conclusive on questions of fact, other findings reviewable. *Gegiow v. Uhl*. 3

Difference between appeal and error is not mere form but is substantial; former involves questions of law and fact and latter is limited to questions of law. *Gsell v. Insular Customs Collector* 93

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A general contention that trial court should have directed verdict involves whole case and law and fact may become so commingled as to make latter depend on former. *Texas & Pacific Ry. v. Bigger* 330

LAW GOVERNING:

It would be miscarriage of justice to recover upon a statute not governing the case and in a case the statute declares was commenced too late. *Atlantic Coast Line v. Burnette* . . 199
 Holding by highest court of State that State Workmen's Compensation Act established comprehensive plan for relief of workmen included therein regardless of fault, is exclusive notwithstanding it did not expressly repeal statute giving right of action for death, is binding on Federal courts; and so held as to Washington statute. *Northern Pacific Ry. v. Meese* 614
 Where injury was sustained while employé was engaged in interstate commerce, responsibility of carrier governed by Employers' Liability Act which is exclusive and supersedes state law and it is error to submit case to jury as though state law controlled. *C., R. I. & P. Ry. v. Wright* 548
 Homestead rights in land are creation of the States in which lands are situated and validity and operation of mortgages thereon are determined by laws of State as construed by courts of the State. *Moody v. Century Savings Bank* 374

LEGISLATION:

Rule that State may recognize degrees of evil, and adopt legislation accordingly applies to matters concerning which State may legislate. *Truax v. Raich* 33
 As an organized political division of United States, a Territory only possesses such powers as Congress confers upon it and a legislature cannot provide for escheat unless authorized, but authority to legislate on all rightful subjects of legislation includes escheats as in case of Organic Act of Washington Territory. *Christianson v. King County* 356
 See **Congress; Construction.**

LIFE INSURANCE. See **Insurance.****LIMITATIONS:**

Act of March 3, 1891, establishing six-year limitation for actions by United States to annul patents is part of public land laws and does not refer to suits to annul patents for Indian allotments. *La Roque v. United States* 62

LIMITATIONS—Continued.

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Even though not pleaded, if defendant insists and answer admits that an action based on Employers' Liability Act has been brought too late it cannot be maintained. *Atlantic Coast Line v. Burnette* 199

It would be a miscarriage of justice to recover upon a statute not governing the case and in a case which the statute declares was commenced too late. *Id.*

A right may be waived or lost by failure to assert it at the proper time. *Id.*

See **Porto Rico.**

LIQUORS. See **Intoxicating Liquors.**

LOCAL LAW:

Propriety of delegation of authority by legislature to court in matter of formation of drainage districts is matter of local law. *O'Neill v. Leamer* 244

Judgment of state court entitled to highest respect in regard to local matters, such as necessity for drainage districts. *Id.*

Appellate court may, without violating Fourteenth Amendment, correct interlocutory decision on a first appeal when case again comes up with same parties and whether it can be done in particular case is state matter and decision of highest court controlling here. *Moss v. Ramey* 538

Whether a municipal ordinance is, under state constitution, within charter power of city, is matter of state law. *Hada-check v. Los Angeles* 394

Whether a state statute contravenes state constitution does not concern this court. *Miller v. Strahl* 426

In appeals from territorial courts this court follows and sustains application of local law to facts made by courts below unless constrained to contrary by sense of clear error and so held in divorce case from Philippine Islands. *De Villanueva v. Villanueva* 293

See **Law Governing and Captions of Various States, Territories and Insular Possessions.** See also **Uniform Acts.**

LOS ANGELES. See **Municipal Ordinances.**

LOUISIANA. See **Warehousemen.**

MANDAMUS:

Mandamus from this court is proper remedy if a Federal judge refuses to present sealed evidence after litigant shows it is material. *Ex parte Uppercu* 435

MANDATE:

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- This court may determine from knowledge of its members whether court below has properly carried out a recent mandate. *Steinfeld v. Zeckendorf* 26
- This court will not consider provisions in a judgment of a state court entered on mandate of this court as to matters non-Federal. *Id.*
- Cases come to this court from judgments of Supreme Court of Arizona in usual form, and not by appeal even though entered on mandate of this court in cases originally coming from territorial court. *Id.*
- Where case to dissolve combination as illegal under Anti-trust Act becomes moot so that this court cannot decide it upon the merits and court below decided against the Government, course most consonant with justice is to reverse with directions to dismiss without prejudice to Government to assail combination in future if deemed to violate Anti-trust Act. *United States v. Hamburg Co* 446
- As to provisions with respect to dealing with separable penalties in statute, see *Phoenix Ry. v. Geary* 277

MARITIME LAW. See **Charter Party.**

MARRIAGE:

- Section 380, Oklahoma act of Congress of May 2, 1890, legalizing Indian marriages theretofore contracted does not relate to marriages thereafter contracted. *Porter v. Wilson* 170
- See **Citizenship Act; Expatriation; Husband and Wife.**

MARYLAND:

- Statutes of 1906 and 1908, for paving Baltimore streets, not unconstitutional as abuse of power or as denying due process of law or equal protection of the laws. *Wagner v. Baltimore* 207

MASTER AND SERVANT:

- Authority to direct course of third person's servant does not prevent his remaining servant of such third person. *New Orleans S. S. Co. v. United States* 202
- Arizona statute of December 14, 1914, requiring employment of specified number of citizens, void under equal protection provisions of Fourteenth Amendment as against aliens. *Truax v. Raich* 33
- See **Employers' Liability Act; Labor.**

MECHANICS' LIEN. See **Conditional Sale.**

MILEAGE BOOKS. See **Carriers.**

MISSOURI:

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Statute authorizing initial tax of 25 cents an acre for preliminary work on drainage districts does not violate due process clause, Fourteenth Amendment. *Houck v. Little River District*. 254

MISTAKE. See **Fraud**.

MOOT CASE:

This court cannot pass on questions which have become moot as inevitable legal consequence of flagrant European War. *United States v. Hamburg-American Co.*. 466

This court will not, in a case now moot, owing to legal consequences of war, determine whether combination illegal under Sherman Act because it may be recreated after war is over. *Id.*

Where case to dissolve combination as illegal under Anti-trust Act becomes moot so that this court cannot decide it upon the merits and court below decided against the Government, course most consonant with justice is to reverse with directions to dismiss without prejudice to Government to assail combination in future if deemed to violate Anti-trust Act. *Id.*

MORRIS CANAL. See **New Jersey**.

MORTGAGE AND DEED OF TRUST:

Under laws of Iowa a homestead may only be sold under valid mortgage for deficiency remaining after exhausting other property covered by same mortgage. *Moody v. Century Savings Bank*. 374

Right to insist on exemption of homestead under Iowa statute except from sale for deficiency, is not personal to owners of homestead, but may be asserted by anyone holding under the mortgage, nor can they prejudice a transfer of their interest in this right. *Id.*

Validity and operation of mortgages on homesteads are determined by laws of State as construed by courts of the State. *Id.*

See **Bankruptcy Act; Conditional Sale; Porto Rico**.

MUNICIPAL CORPORATIONS:

Municipalities are creatures of the State and subject to its power. *Stewart v. Kansas City*. 14

State has very broad powers over municipalities and may

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exercise them in many ways giving rise to inequalities between municipalities without violating due process or equal protection provisions of Fourteenth Amendment. *Id.*

After municipality has given telegraph company permission to erect lines under specified conditions and there has been compliance therewith such lines are protected by the Post Road Act from exclusion or arbitrary action. *Essex v. New England Telephone Co.* 313

Municipality may not arbitrarily exclude telegraph lines from its streets, but may impose reasonable restrictions and regulations. *Id.*

Rights of telegraph company under Post Road Act, which would be violated by threatened arbitrary action of municipality, may be protected by equity, but injunction must not prevent municipality from subjecting location and operation of lines to reasonable regulations. *Id.*

Municipality may waive rights and by acquiescence for long period of years in maintenance of poles and expenditures by telegraph company be estopped or regarded as having waived rights. *Id.*

States may apportion burdens for improvement such as drainage districts among municipalities or create tax districts either directly or by delegated authority. *O'Neill v. Leamer* 244

Neither a municipality nor one contracting therewith nor a taxpayer on its behalf can assert the proprietary rights of an individual against the State in determining who shall be employed on public works authorized by the State. *Heim v. McCall*. 175

Crane v. New York 195

Statute requiring counties to reimburse cities of first class but not of other classes for rebates allowed for prompt payment of taxes not unconstitutional under due process or equal protection provision of Fourteenth Amendment. *Stewart v. Kansas City*. 14

State may by direct legislation or through authorized municipalities declare emission of dense smoke in populous neighborhoods nuisance and restrain, and unless arbitrary, such regulations not violative of Fourteenth Amendment. *Northwestern Laundry v. Des Moines*. 486

State police statute otherwise valid not denial of equal protection because it includes some municipalities and omits others. *Id.*

MUNICIPAL CORPORATIONS—Continued.

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Where state court has not passed on whether ordinance exceeds legislative grant to municipality this court will. *Id.*

See **Police Power; Public Works.**

MUNICIPAL LAW:

Subject to general scheme of local government defined by Organic Act and special provisions it contains and right to revise, alter and revoke, legislatures of Territories have been entrusted with enactment of entire system of municipal law of Territories. *Christianson v. King County*. 356

MUNICIPAL ORDINANCES:

Des Moines Smoke Abatement Ordinance not invalid under Iowa statute or Fourteenth Amendment either as to due process or equal protection. *Northwestern Laundry v. Des Moines*. 486

Police power may be exerted under proper conditions to declare under particular circumstances and in particular localities specified businesses, such as brick-making, which are not nuisances *per se* to be nuisances in fact and law as in Los Angeles ordinance, without violating Fourteenth Amendment; but *quære* as to simply digging clay for brick-making elsewhere. *Hadacheck v. Los Angeles*. 394

Charges of one attacking municipal ordinance declaring brick-making a nuisance in sections of city that it was adopted to foster monopoly and suppresses competition held too illusive for this court to consider it, state court having refused to do so. *Id.*

Fact that ordinance does not prohibit brick-making business in all sections of city, as in Los Angeles ordinance, does not make it unconstitutional as denying equal protection of law. *Id.*

Ordinance applying equally to all within terms not denial equal protection of law if reasonable basis for classification, even though other businesses might have been included. *Northwestern Laundry v. Des Moines*. 486

Municipal ordinance cannot be attacked as denying equal protection of law when contention based on disputable considerations of classification and conditions not judicially determinable. *Hadacheck v. Los Angeles*. 394

This court in determining constitutionality of municipal ordinance attacked as going too far accords good faith to municipality in absence of clear showing to contrary. *Id.*

MUNICIPAL ORDINANCES—*Continued.*

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Whether ordinance is, under state constitution, within charter power of city is matter of state law. *Id.*

Whether statute repealing former statute but reenacting identical matter affects validity of ordinances established under earlier statute a state matter. *Northwestern Laundry v. Des Moines* 486

Where state court has not passed on whether ordinance exceeds legislative grant to municipality this court will. *Id.*

MUTUAL MISTAKE. See **Court of Claims.**

NATIONALITY. See **Citizenship Act; United States.**

NAVIGABLE WATERS. See **Riparian Rights.**

NAVY. See **Army and Navy.**

NEBRASKA:

Statute of 1913, requiring keepers of hotels having over fifty rooms to keep night watchmen and awaken guests in case of fire, not unconstitutional under due process or equal protection clauses. *Miller v. Strahl* 426

Drainage district statutes of 1905 and 1909 delegating authority to courts and appropriating property by eminent domain not unconstitutional under Fourteenth or Fifteenth Amendment. *O'Neill v. Leamer* 244

Error not prejudicial affords no ground for reversal and if employer not prejudiced by difference between Federal Employers' Liability Act and state acts as in Nebraska judgment not reversed. *C., R. I. & P. Ry. v. Wright* 548

NEGLIGENCE:

Failure to exercise care constitutes negligence, but mere existence of a number of tracks near to each other in a terminal where public streets are utilized does not support inference of negligence. *Reese v. Phila. & Reading Ry.* 463

Under Employers' Liability Act action lies for injury or death resulting in whole or in part from negligence of carrier. *Kanawha Ry. v. Kerse* 576

To operate switch so obstructed as to endanger brakemen's lives evidence of negligence and continued existence of obstruction, presumption of notice to carrier. *Id.*

Whether continuing to use defective apparatus instead of another which might be unsafe amounts to contributory

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negligence is question for jury. *Seaboard Air Line v. Horton* 595

Authorities differ and this court has not yet decided whether continuing of employment on promise of reparation in presence of imminent danger that no ordinarily prudent man would confront amounts to assumption of risk or contributory negligence. *Id.*

Verdict of jury against carrier for negligence in regard to delivering passenger in unsuitable place without protection from inclemency of weather. *Texas & Pacific Ry. v. Bigger* 330

Trial court entered non-suit where there was no evidence that railroad failed to furnish safe place for employé who was killed while leaning out from his engine. *Reese v. Phila. & Reading Ry.* 463

Distinction between assumption of risk and contributory negligence, formerly of little consequence when both led to same result, are more important under the Employers' Liability Act, as former is complete bar and latter simply mitigates damages. *Seaboard Air Line v. Horton* 595

Reasonable reliance by employé on promise of reparation and continuance in employment not contributory negligence as matter of law and question in this case properly submitted to jury. *Id.*

See **Employers' Liability Act; Safety Appliance Act.**

NELSON ACT. See **Indians.****NEW JERSEY:**

Taxes imposed on lessee of Morris Canal Company not unconstitutional impairment of contract of original charter exemption of property in actual possession and use of original company. *Morris Canal Co. v. Baird.* 126

NEW YORK:

In condemnation proceedings in New York although maps made of parcels and notices posted, the proceedings are not commenced until petition is filed and a non-resident purchasing before that can remove case into Federal court. *New York v. Sage* 57

Section 14, Labor Law, 1909, does not violate Treaty with Italy of 1871 nor Constitutional under privileges and immunities clause and Fourteenth Amendment. *Heim v. McCall.* 175

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See **Treaties.**

NORTHERN PACIFIC RAILWAY:

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Act of 1904 validating conveyances within right of way of Northern Pacific Railway related only to conveyances theretofore made and gave no power to railway company to make conveyances thereafter, or to others to acquire by adverse possession which had not matured prior thereto. *Northern Pacific Ry. v. Concanon* 382

Although adverse possession may have been the basis of the judgment of the state court, if it did not seem against a Federal instrumentality, the judgment cannot be sustained as resting on an independent non-Federal ground. *Id.*

NORTHWEST TERRITORY:

Provisions in ordinances and statutes relating to Northwest Territory, involved in this case, do not control riparian rights enjoyed under law of State carved out of the Territory. *Norton v. Whiteside*. 144

See **Jurisdiction.**

NOTICE:

Continued existence of dangerous obstruction over switch presumption of notice to carrier. *Kanawha Ry. v. Kerse* 576

See **Judicial Knowledge; Negligence.**

NUISANCE:

Police power may be exerted under proper conditions to declare under particular circumstances and in particular localities specified businesses such as brick-making, which are not nuisances *per se* to be nuisances in fact and law, as in Los Angeles Ordinance, without violating Fourteenth Amendment; but *quære* as to simply digging clay for brick-making elsewhere. *Hadacheck v. Los Angeles* 394

Proper police regulation prohibiting nuisances not denial of due process law even though affecting use of property or subjecting owner to expense in compliance. *Northwestern Laundry v. Des Moines* 486

State may by direct legislation or through authorized municipalities declare emission of dense smoke in populous neighborhoods nuisance and restrain, and unless arbitrary, such regulations not violative of Fourteenth Amendment. *Id.*

Suit to abate. See **Jurisdiction, IV.**

OFFICE FOUND:

Where Territory has authority to establish rule as to escheat it has power to establish tribunals with jurisdiction and

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procedure, and if other proceedings are established, as in Washington, by probate court, decree of office found is not necessary. *Christianson v. King County*. 356

OFFICERS OF UNITED STATES. See **Army and Navy; Contracts; Criminal Law; Public Officers.**

OFFICIAL BOND. See **Bonds.**

OHIO:

Judgment of intermediate appellate state court not final judgment under § 237, Jud. Code, if highest court of State has discretionary power of review, as in Ohio, which has been invoked and refused. *Stratton v. Stratton* 55

OKLAHOMA:

Provision in § 380 of the Oklahoma Act of May 2, 1890, legalizing Indian marriages theretofore contracted does not relate to those thereafter contracted. *Porter v. Wilson* . . . 170
The trial court did not deprive plaintiff of property without due process of law in disregarding § 5039, Rev. Laws Oklahoma, making provisions of the statute applicable to trials by the court without jury. *Id.*

OMAHA INDIANS. See **Indians.**

OPPORTUNITY TO BE HEARD. See **Constitutional Law; Taxes and Taxation.**

ORDINANCES. See **Municipal Ordinances; Police Power.**

ORGANIC ACTS. See **Territories.**

PARTIES:

In absence of bad faith motive of plaintiff in making defendants parties who are jointly liable does not affect right to remove case, and whether complaint states joint cause of action against resident and non-resident defendants is a matter of state law. *Chicago & Rock Island Ry. v. Whiteaker* 421
Plaintiff having cause of action against non-resident railroad and also against resident employé may join them both as defendants; and non-resident defendant cannot, in absence of clearly shown fraud, remove case into Federal court; and merely to traverse or apply epithets of fraud not sufficient. *Id.*

To proceeding involving title to property sold under conditional sale. See *Bailey v. Baker*. 268

PASSES:

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Anti-pass provision of the Hepburn Act of 1906 applies to common carriers by railroad in interstate commerce with respect to transportation within State as part of an interstate journey. *N. Y. Central R. R. v. Gray* 583

Provision of act operates upon agreement made for exchange of transportation before passage of act for anything else than money, and specific performance cannot be required: interstate carrier is not relieved from making adequate money compensation for unpaid balance of contract for services fully performed before passage of act. *Id.*

PATENTS FOR INVENTIONS:

A process may be independent of the instruments employed and expiration of foreign patent for one may not affect United States patent for the other; and in this case patent for acetylene gas tanks is for apparatus and foreign patents are for process. *Fireball Tank Co. v. Commercial Co.* 156

Where there are conflicting opinions of different Circuit Courts of Appeal on questions in patent cases of infringement and identity of expired foreign patents, injunction pending trial is proper, and if questions of identity are decided other questions should be reserved for trial. *Id.*

Suit for royalties reserved on sale of patent rights is not suit arising under patent law and District Court does not have jurisdiction on that ground under § 24, Judicial Code, nor in this case under Rev. Stat., § 4915 or 4918, or in equity under act of February 9, 1883. *Briggs v. United Shoe Co.* . . . 48

Only the United States can maintain bill in equity for annulment of patent on ground of procurement by fraud. *Id.*

PATENTS FOR LAND. See **Public Lands; Riparian Rights.**

PAY AND ALLOWANCES. See **Army and Navy.**

PENAL CODE. See **Criminal Code.**

PENALTIES AND FORFEITURES:

When provisions in statutes separable, court will not determine validity in advance of attempt to enforce. *Phoenix Ry. v. Geary* 277

Where statute attacked as unconstitutional is sustained, but penalty provisions separable, court will not attempt to determine constitutionality in advance, but will deny relief without prejudice to court below dealing with penalty provisions when they arise. *Id.*

PERSONAL PROPERTY. See **Conditional Sale.**

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PHILIPPINE ISLANDS:

Value of community property sufficient to give this court jurisdiction of appeal in divorce case. *De Villanueva v. Villanueva* 293

In appeals from territorial courts this court follows and sustains application of local law to facts made by courts below unless constrained to contrary by sense of clear error, and so held in divorce case from Philippine Islands. *Id.*

Writ of error is inapplicable to review customs cases involving facts to determine classification of merchandise; and judgments of Supreme Court of Philippine Islands in customs cases must be reviewed by appeal and not writ of error. *Gsell v. Insular Customs Collector* 93

Under Philippine Island Act of July 1, 1902, same regulations and procedure apply to review by this court of judgments of Supreme Court of Philippine Islands as to final judgments of Circuit Courts, and this provision is essential and requires compliance. *Id.*

Immigration and Chinese Exclusion Acts have been carried by act of Congress to Philippine Islands to be there put into effect by Insular Government which has in express terms conferred general supervisory authority on Insular Collector of Customs. *Sui v. McCoy* 139

There is no conflict between the provisions of the act of Congress carrying the Immigration and Chinese Exclusion Acts to the Philippines and the action of the Insular Collector in referring questions relating to the right of a Chinese person to land and to a board acting under his supervision in immigration matters. *Id.*

Deportation orders from Philippine Islands of person of Chinese descent not improperly issued by Insular Collector because matter had been referred to board of inquiry appointed under Immigration Act. *Id.*

PHILIPPINE TARIFF ACT:

Review of judgments of Supreme Court of Philippine Islands is regulated by act of July 1, 1902, under which this court has jurisdiction if statute of United States, such as Philippine Tariff Act, is involved. *Gsell v. Insular Customs Collector* 93

PICTURES:

Importation of pictorial illustrations of prize fights for public exhibition prohibited. *Weber v. Freed* 325

PLEADING:

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- Allowance by court after testimony in, of amendment bringing case specifically under Employers' Liability Act, not beyond discretionary power of court or denial of due process of law. *Seaboard Air Line Ry. v. Koennecke* 352
- Even though not pleaded, if defendant insists and answer admits that an action based on Employers' Liability Act has been brought too late it cannot be maintained. *Atlantic Coast Line v. Burnette*. 199
- Averments in libel under Food and Drugs Act must receive sensible construction, must definitely charge statutory offense of misbranding by statements made as to articles in interstate commerce that were false and made with intent to deceive as to curative powers of drugs; and in this case allegation sufficient. *Seven Cases &c. v. United States* 510
- Whether complaint states joint cause of action against resident and non-resident defendants is a matter of state law. *Chicago & Rock Island Ry. v. Whiteaker* 421
- Plaintiff having cause of action against non-resident railroad and also against resident employé may join them both as defendants; and non-resident defendant cannot, in absence of clearly shown fraud, remove case into Federal court; and merely to traverse or apply epithets of fraud not sufficient. *Id.*
- Right to remove cannot be established by petition simply traversing fact; state court only required to surrender jurisdiction over non-resident defendant joined with resident when facts alleged fairly raise issue of fraud in joinder. *Southern Ry. v. Lloyd*. 496

See **Practice and Procedure**.

POLICE POWER:

- Police power, while not to be arbitrarily exercised, is one of most essential powers of State and least limitable and there is imperative necessity for its existence. *Hadacheck v. Los Angeles*. 394
- Police power may be exerted under proper conditions to declare under particular circumstances and in particular localities specified businesses, such as brick-making, which are not nuisances *per se* to be nuisances in fact and law—as in Los Angeles Ordinance—without violating Fourteenth Amendment; but *quære* as to simply digging clay for brick-making elsewhere. *Id.*
- Municipal ordinance cannot be attacked as denying equal

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protection of law when contention based on disputable considerations of classification and conditions not judicially determinable. *Id.*

Charges of one attacking municipal ordinance declaring brick-making a nuisance in sections of city, that it was adopted to foster monopoly and suppress competition, held too illusive for this court to consider, state court having refused to do so. *Id.*

Fact that ordinance does not prohibit brick-making business in all sections of city, as in Los Angeles ordinance, does not make it unconstitutional as denying equal protection of law. *Id.*

Vested interests cannot, because of conditions once obtaining, be asserted against proper exercise of police power. *Id.*

Congress not to be denied exercise of constitutional authority over interstate commerce because necessary means have quality of police regulations. *Seven Cases &c. v. United States.* 510

This court in determining constitutionality of municipal ordinance attacked as going too far, accords good faith to municipality in absence of clear showing to contrary. *Hada-check v. Los Angeles.* 394

State may prescribe duties of hotel keepers regarding fires, and police statute expressing rules in general does not lack due process of law. *Miller v. Strahl.* 426

Statute of 1913 of Nebraska, requiring keepers of hotels having over fifty rooms to keep night watchmen and awaken guests in case of fire, not unconstitutional under due process or equal protection clauses. *Id.*

Police statute, otherwise valid, not unconstitutional as denying equal protection of law because only applicable to hotels having more than fifty rooms; classification has reasonable basis. *Id.*

Proper police regulation prohibiting nuisances not denial of due process of law even though affecting use of property or subjecting owner to expense in compliance. *Northwestern Laundry v. Des Moines.* 486

State may by direct legislation or through authorized municipalities declare emission of dense smoke in populous neighborhoods nuisance and restrain, and unless arbitrary, such regulations not violative of Fourteenth Amendment. *Id.*

State police statute otherwise valid not denial equal pro-

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tection because it includes some municipalities and omits others. *Id.*

PORTO RICO:

In cases coming from the District Court of Porto Rico, the existence of constitutional questions must appear in the bill of exceptions. *Cerecedo v. United States* 1

Earlier decisions of Porto Rico courts holding proceeding under Mortgage Law, § 395, to establish title not *res judicata* and that § 395 not repealed directly nor by implication, amounted to rule of property not to be overruled. *Elzaburu v. Chaves* 283

Code, § 4481, is only applicable to cases of lesion in cases of sale embraced in § 4480 of that code, formerly § 1375, previous Code. *Parker v. Monroig*. 83

Community cannot enjoy an acquet free of obligation inseparably created with it and if it takes real estate subject to a servitude imposed by the Master before acquisition it cannot thereafter enjoy it free of servitude because wife did not unite therein. *Id.*

See **Civil Law; Foraker Act.**

POST ROAD ACT:

Act of 1866 must be construed and applied in light of existing conditions and with a view to effectuate the purpose for which it was enacted. *Essex v. New England Telephone Co.* 213

Act declares in interest of commerce and convenient transmission of intelligence of Government of United States and its citizens that erection of telegraph lines shall so far as state interference is concerned be free to all submitting to its conditions. *Id.*

Rights of telegraph company under act which would be violated by threatened arbitrary action of municipality, may be protected by equity, but injunction must not prevent municipality from subjecting location and operation of lines to reasonable regulations. *Id.*

State has no authority to say telegraph company may not operate lines constructed over postal routes within its borders; nor may municipality arbitrarily exclude such lines from its streets, but may impose reasonable restrictions and regulations. *Id.*

After municipality has given telegraph company permission to erect lines under specified conditions and there has been

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compliance therewith such lines are protected by the Post Road Act from exclusion or arbitrary action. *Id.*

POWERS OF GOVERNMENT. See Congress; Police Power; States.

PRACTICE AND PROCEDURE:

Scope of review: This court will not consider provisions in a judgment of a state court entered on mandate of this court as to matters non-Federal. *Steinfeld v. Zeckendorf* 26

When questions of negligence and the like are brought here simply because arising under the Employers' Liability Act and involve no new principles, this court confines itself to summary statement of results. *Seaboard Air Line Ry. v. Koennecke* 352

Where penal provisions in constitution and laws relating to public utility corporations are separable from order of state railroad commission and authority on which it rests this court will not in advance of attempt to enforce them determine whether penalties so severe as to deny due process of law under Fourteenth Amendment: so as to Arizona statutes. *Phoenix Ry. v. Geary* 277

Where a state court places its decision on sustaining tax on ground that company was doing business in State, this court need only consider that question. *Provident Savings Ass'n v. Kentucky* 103

Where state court has not passed on whether ordinance exceeds legislative grant to municipality this court will. *Northwestern Laundry v. Des Moines* 486

Charges of one attacking municipal ordinance declaring brick-making a nuisance in sections of city that it was adopted to foster monopoly and suppress competition, held too illusive for this court to consider, state court having refused to do so. *Hadacheck v. Los Angeles* 394

South Carolina statute making delivering carrier responsible for damages, having been construed by highest court of State as not requiring carrier to accept on through bills of lading from other carriers, constitutionality of a statute requiring acceptance and making delivering carrier responsible for damages on other lines not determined. *Atlantic Coast Line v. Glenn* 388

Although adverse possession may have been the basis of the judgment of the state court, if it did not seem against a

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- Federal instrumentality, the judgment cannot be sustained as resting on an independent non-Federal ground. *Northern Pacific Ry. v. Concanon* 382
- The highest court of the State not having passed on whether, although questioned, taxpayer had right to maintain action, this court may, even if not required to do so, assume right exists. *Heim v. McCall* 175
- Crane v. New York* 195
- This court in determining constitutionality of municipal ordinance attacked as going too far accords good faith to municipality in absence of clear showing to contrary. *Hadacheck v. Los Angeles* 394
- Whether a state statute contravenes state constitution does not concern this court. *Miller v. Strahl* 426
- Allowance of equitable relief question of state policy and if state court treats merits of suit in which equitable relief is sought as legitimately before it this court will not attempt to decide whether state court could have thrown case out. *Bi-Metallic Co. v. Colorado* 441
- Highest court of State ultimate judge extent of its jurisdiction; unless Federal right denied its decision conclusive here. *Dayton Coal Co. v. Cincinnati Ry.* 446
- This court cannot pass on questions which have become moot as inevitable legal consequence of flagrant European War. *United States v. Hamburg-American Co.* 446
- Rule of this court based on fundamental principles of public policy not to establish rules for controlling predicted future conduct; it will not in a case now moot owing to legal consequences of war determine whether combination illegal under Sherman Act because it may be recreated after war is over. *Id.*
- Where no state statute is shown giving adequate remedy at law to one seeking to enjoin enforcement of ordinance, this court must deal with questions both state and Federal as they appear on face of bill. *Northwestern Laundry v. Des Moines* 486
- Disposition of case:* Where statute sought to be enjoined is sustained, but penalty provisions are separable, practice is to deny relief sought against whole statute without prejudice to court below dealing with penalty provisions when they arise. *Phoenix Ry. v. Geary* 277
- Error not prejudicial affords no ground for reversal and if employer not prejudiced by difference between Federal Em-

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players Liability Act and state acts, as in Nebraska, judgment not reversed. <i>C., R. I. & P. Ry. v. Wright</i>	548
Even if parties do not press motion to dismiss for want of jurisdiction this court cannot disregard it. <i>Hapai v. Brown</i>	502
Although trial court erred in refusing request as to employé's assumption of risk based on hypothesis of his knowledge of obstruction causing injury if jury specifically negatived hypothesis, error not ground for reversal. <i>Kanawha Ry. v. Kerse</i>	576
Where case to dissolve combination as illegal under Anti-trust Act becomes moot so that this court cannot decide it upon the merits and court below decided against the Government, course most consonant with justice is to reverse with directions to dismiss without prejudice to Government to assail combination in future if deemed to violate Anti-trust Act. <i>United States v. Hamburg-American Co.</i>	446
Record discloses no sufficient ground for reversing the court below on questions of fact. <i>Elzaburu v. Chaves</i>	283
Following lower courts: Findings of fact made by both courts below not disturbed by this court unless clearly erroneous. <i>De Villanueva v. Villanueva</i>	293
<i>National Bank v. Shackelford</i>	81
This court follows conclusions reached by Master and both courts below, in this case that transactions were loans with accounts as collateral security and not absolute sales of the accounts. <i>Home Bond Co. v. McChesney</i>	568
This court follows decision of state court that a provision in its general laws regarding public work applies to the particular work involved and to the municipalities of the State. <i>Heim v. McCall</i>	175
<i>Crane v. New York</i>	195
Federal courts must accept construction of state statute deliberately adopted by highest court of State. <i>Northern Pacific Ry. v. Meese</i>	614
This court accepts the decisions of the highest court of the State that the state constitution is not violated by any action of the trial court. <i>Porter v. Wilson</i>	170
While findings of fact by state court in ordinary cases coming under Jud. Code, § 237, are conclusive here in cases arising under contract clause of the Federal Constitution, they are not binding if Federal right has been denied as result of finding of fact not supported by evidence, but in this case finding supported. <i>Interstate Amusement Co. v. Albert</i>	560

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In appeals from territorial courts this court follows and sustains application of local law to facts made by courts below unless constrained to contrary by sense of clear error; and so held in divorce case for Philippine Islands. <i>De Villanueva v. Villanueva</i>	293
Judgment of state court entitled to highest respect in regard to local matters such as necessity for drainage districts. <i>O'Neill v. Leamer</i>	244
Where constitutionality of method of taxation under state statute is questioned Federal court is not bound by decision of state court upholding such method, if question of constitutionality was raised in the case decided by the state court. <i>Johnson v. Wells Fargo</i>	234
Holding by highest court of State that state Workmen's Compensation Act, established comprehensive plan for relief of workmen included therein regardless of fault, is exclusive notwithstanding it did not expressly repeal statute giving right of action for death, is binding on Federal courts; and so held as to Washington statute. <i>Northern Pacific Ry. v. Meese</i>	614
Appellate court may, without violating Fourteenth Amendment, correct interlocutory decision on a first appeal when case again comes up with same parties and whether it can be done in particular case is state matter and decision of highest court controlling here. <i>Moss v. Ramey</i>	538
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<i>Bill of exceptions:</i> In cases coming from the District Court of Porto Rico, the existence of constitutional questions must appear in the bill of exceptions. <i>Cerecedo v. United States</i> . .	1
Even though this court may have an extraordinary discretion to supply absence of bill of exceptions, in this case there is no ground for exercising that discretion. <i>Id.</i>	
<i>In general:</i> Where case is tried to a jury, verdict for plaintiff must be considered by appellate court as determining disputed questions of fact against defendant. <i>Texas & Pacific Ry. v. Bigger</i>	330
A defendant removing case from state court, and not reserving question of jurisdiction of state court cannot, after pleading in and submitting to jurisdiction of Federal court, raise question of jurisdiction of state court. <i>Id.</i>	
A general contention that trial court should have directed	

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verdict involves whole case, and law and fact may become so commingled as to make latter depend on former. *Id.*

Congress, within its sphere, is paramount over States and courts cannot, where will of Congress plainly appears, allow substantive rights to be impaired under name of procedure.

Atlantic Coast Line v. Burnette 199

Usual practice in States where discretionary power exists in highest appellate courts to review judgments of intermediate appellate courts is to invoke its exercise before bringing writ of error from this court. *Stratton v. Stratton*. 55

This court may determine from knowledge of its members whether court below has properly carried out a recent mandate. *Steinfeld v. Zeckendorf* 26

Postponing consideration of a motion to dismiss until the hearing on the merits does not amount to a decision that the court has power to review the judgment. *Cerecedo v. United States*. 1

See **Appeal and Error; Court of Claims; Injunction.**

PRESIDENT:

Where determination of certain questions is left by the statute to the President, court will not presume greater power entrusted to subordinates than is given by the statute to the President. *Gegiow v. Uhl*. 3

PRESUMPTIONS:

Existence of obstruction for considerable time endangering lives of brakemen is presumptive evidence of notice. *Kanawha Ry. v. Kerse* 576

This court will not presume that highest court of Hawaiian Islands did not know its own powers or decide in accordance with law of kingdom. *Hapai v. Brown*. 502

In absence of highest court of State passing on question whether taxpayer has right to maintain action this court may assume such right exists. *Heim v. McCall*. 175

Crane v. New York 195

Inference naturally arising from silence of field notes plat that there was no island at time of survey or if any, only inconsiderable one, refutable, and in this case is refuted, by evidence. *Moss v. Ramey* 538

See **Injunction; President.**

PRIVILEGES AND IMMUNITIES. See **Constitutional Law, XI.**

PRIVILEGE TAX. See **Taxes and Taxation.**

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PRIZE FIGHTS:

Pictorial illustrations for use in exhibitions; importation prohibited. *Weber v. Freed* 325

PROCEDURE. See **Practice and Procedure.**

PROCESS. See **Appeal and Error; Habeas Corpus; Injunction; Jurisdiction.**

PROPERTY RIGHTS. See **Constitutional Law.**

PUBLIC LANDS:

An error of surveyor in failing to extend survey over island in river does not make such island any the less part of public domain. *Moss v. Ramey* 538

Inference naturally arising from silence of field notes plat that there was no island at time of survey or, if any, only inconsiderable one, refutable, and in this case is refuted, by evidence. *Id.*

Fast dry land which is neither part of bed of river nor land under water was part of the public domain within Idaho Territory and as such did not pass to State on admission to Union but remained public land. *Id.*

Patents to lots abutting on river do not include actual islands of fast dry land and of stable foundation lying between lots and thread of stream. *Id.*

Act of March 3, 1891, establishing six-year limitation for actions by United States to annul patents, is part of public land laws and does not refer to suits to annul patents for Indian allotments. *LaRoque v. United States* 62

Prohibition in Organic Act of Washington of 1853 against interference with primary disposal of soil had reference to public lands of United States and did not relate to escheat of land for failure of heirs. *Christianson v. King County* 356

See **Homesteads; Riparian Rights.**

PUBLIC OFFICERS:

Decision of Immigration Commissioners conclusive as to questions of fact but other findings reviewable by courts *Gegion v. Uhl.*

Rule that Court of Claims has not jurisdiction of actions founded on torts based on policy imposed by necessity that governments are not liable for unauthorized wrongs inflicted by officers on citizens even though in discharge of official duties. *Basso v. United States.* 602

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Schillinger v. United States, 155 U. S. 163, subsisting authority for rule that Court of Claims has not jurisdiction of claim founded on wrongful act of officer of United States. *Id.*

Congress has wisely reserved to itself the right to give relief where claim founded on torts of officer of United States. *Id.*

United States has power to prohibit false personation of its officers, or false assumption of being an officer, or holding a non-existent office, and legislation to that end does not interfere with or encroach on powers of States and § 32, Criminal Code, is not unconstitutional. *United States v. Barnow*

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Prohibition in § 32, Criminal Code, against false personation of officer or employé of United States, not confined to false personation of particular person but covers any false assumption or pretense of office or employment if done with intent to defraud and accompanied by specified acts. *Id.*

Offense of falsely personating officer or employé of United States under Criminal Code, § 32, is complete on the personation and demanding and obtaining money even if person defrauded be not financially injured. *Id.*

This court has no jurisdiction under § 237, Jud. Code, to review judgment of state court determining duty of county officer under the law of the State. *Stewart v. Kansas City* . .

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County officers have no personal interest in litigation brought to apply public moneys and cannot defend a suit on ground that statute deprives him of his property without due process of law. *Id.*

Suit against officers of State about to proceed wrongfully to enforce unconstitutional state statute to complainant's injury, not suit against State. *Truax v. Raich*

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PUBLIC POLICY:

Neither general provisions of the Fourteenth Amendment nor other provisions of the Constitution prevent States from adopting public policy to meet special exigencies such as establishment of drainage district. *O'Neill v. Leamer*

244

By passing act June 25, 1910, vesting power to determine legal heirs allottee Indians in Secretary Interior, Congress evinced change of public policy and its opinion as to better manner preserving rights of Indians. *Hallorvell v. Commons*

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Rule that Court of Claims has not jurisdiction of actions founded on torts based on policy imposed by necessity that governments are not liable for unauthorized wrongs inflicted

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by officers on citizens even though in discharge of official duties. *Basso v. United States* 602

See **Public Works**.

PUBLIC WORKS:

State as guardian and trustee of people may prescribe conditions on which public work shall be done for it and its municipalities—being a matter of public policy courts are not concerned therewith. *Heim v. McCall*. 175

Crane v. New York. 195

Neither a municipality, nor one contracting therewith, nor a taxpayer on its behalf, can assert proprietary rights of an individual against the State in determining who shall be employed on public works authorized by the State. *Id.*

Section 14, Labor Law, New York 1909, not unconstitutional as violating treaty with Italy of 1871, or as abridging privileges and immunities of citizens of the United States, or as depriving of property without due process of law, or as denying equal protection of the laws, because it provides that only citizens of the United States be employed on public works and that preference be given to citizens of New York. *Id.*

See **Taxes and Taxation**.

PURE FOOD AND DRUGS ACT:

Shirley Amendment making misbranding include false and fraudulent statements as to curative power within power of Congress to regulate interstate commerce. *Seven Cases &c. v. United States*. 510

The amendment not unconstitutional under Fifth Amendment for uncertainty. *Id.*

The amendment is not unconstitutional under Sixth Amendment as preventing laying definite charge thereunder. *Id.*

False and fraudulent statements covered by Shirley Amendment are within power of Congress to regulate, whether contained in original package or on containers of articles. *Id.*

Phrase "False and Fraudulent" as used in Shirley Amendment used in accepted legal meaning, and to condemn thereunder statements have been put in package with actual intent to deceive. *Id.*

Intent to deceive may be derived from facts and circum-

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stances and can and must be established by proof of falsity as to statements accompanying drugs such as to effect they have curative powers over diseases such as pneumonia and tuberculosis. *Id.*

Averments in libel under act must receive sensible construction, must definitely charge statutory offense of misbranding by statements made as to articles in interstate commerce that were false and made with intent to deceive as to curative powers of drugs; and in this case allegation sufficient. *Id.*

RAILROAD COMMISSIONS:

District Court has jurisdiction of action to enjoin enforcement of order where bill shows arbitrary or confiscatory action; but temporary injunction should not be granted unless bill and affidavits clearly show such action. *Phoenix Ry. v. Geary*.

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Where provisions for penalties are separable from order of commission court will not determine validity of former in advance of attempt to enforce. *Id.*

RAILROADS:

Right of way granted by act of 1875 is neither mere easement nor fee simple but limited fee made under implied condition of reverter in case of non-user. *Rio Grande Ry. v. Stringham* Judgment granting railroad company right of way under act of 1875 uses terms with same meaning as used in act. *Id.* See **Carriers; Employers' Liability Act; Interstate Commerce; Northern Pacific Railroad; Safety Appliance Act.**

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RATES. See **Carriers.**

REAL PROPERTY. See **Community Property; Eminent Domain; Northern Pacific Railway; Porto Rico.**

RECORDING INSTRUMENTS. See **Conditional Sale.**

RELEASE:

Employers' Liability Act has no application to releases given to those who are not employers. *Chicago & Alton R. R. v. Wagner*.

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Where one of two joint tortfeasors who is the employer obtains a release from the injured employé which is invalid under § 5 of the Employers' Liability Act, the court does

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not deny the other joint tort feisor a Federal right by holding that the release is not valid as to it beyond setting off the amount paid. *Id.*

See **Court of Claims.**

REMEDIAL STATUTES. See **Construction.**

REMEDIES:

Mandamus from this court is proper remedy if a Federal judge refuses to present sealed evidence after litigant shows it is material. *Ex parte Upperco* 435

The duty to resort to adequate remedy provided in state statute cannot be escaped by assuming that even if resorted to the wrong would not have been righted. *Mellon Co. v. McCafferty* 134

See **Equity; Habeas Corpus; Injunction.**

REMOVAL OF CAUSES:

Right to remove cannot be established by petition simply traversing fact; state court only required to surrender jurisdiction over non-resident defendant joined with resident when facts alleged fairly raise issue of fraud in joinder. *Southern Railway v. Lloyd* 496

In absence of bad faith motive of plaintiff in making defendants parties who are jointly liable does not affect right to remove case and whether complaint states joint cause of action against resident and non-resident defendants is a matter of state law. *Chicago & Rock Island Ry. v. Whiteaker* . . 421

Plaintiff having cause of action against non-resident railroad and also against resident employé may join them both as defendants; and non-resident defendant cannot, in absence of clearly shown fraud, remove case into Federal court; and merely to traverse or apply epithets of fraud not sufficient. *Id.*

A defendant removing case from state court, and not reserving question of jurisdiction of state court cannot, after pleading in and submitting to jurisdiction of Federal court, raise question of jurisdiction of state court. *Texas & Pacific Ry. v. Bigger* 330

In condemnation proceedings in New York, although maps made of parcels and notices posted, the proceeding is not commenced until petition is filed and a non-resident purchasing before that can remove case into Federal court. *New York v. Sage* 57

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- Employers' Liability Act as amended in 1910 expressly provides state court has jurisdiction of actions thereunder, and no such case removable merely for diverse citizenship. *Southern Ry. v. Lloyd*. 496
- Orders of non-suit as to resident defendant where plaintiff had, and avails, of right to appeal, does not make case removable as to non-resident defendant. *Id.*

RENUNCIATION OF CITIZENSHIP. See **Expatriation.****REPARATION.** See **Interstate Commerce.****REPEALS.** See **Construction; Statutes.****RESERVATIONS.** See **Indians.****RES JUDICATA:**

- Proceedings under § 395, Mortgage Law of Porto Rico, to establish title, not *res judicata*. *Elzaburu v. Chaves*. 283
- A party defeated in a statutory proceeding in lower court which higher courts have declared was not *res judicata*, may rely on such decision and not appeal but bring suit in courts to set judgment aside. *Id.*
- Judgment of Supreme Court of Hawaiian Islands in suit for partition *res judicata* in subsequent suit between same parties and privies. *Hapai v. Brown*. 502
- Where there is no doubt that import of decree pleaded as *res judicata* to bill to quiet title was to effect that plaintiff in former action had no title to property, inquiry in subsequent action narrowed to question of jurisdiction of court rendering decree pleaded. *Id.*

RESTRICTIONS ON ALIENATION. See **Indians.****REVISED STATUTES:**

- Section 13 not applicable where Congress simply changes tribunal without excepting pending litigation. *Hallowell v. Commons*. 506
- Quære*, whether § 1235 intended to preclude recovery by enlisted men of extra duty pay where duty was performed under direction of competent authority but not in writing. *United States v. Ross*. 530
- Section 1462. See **Army and Navy.**
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RIGHT OF WAY ACT. See **Railroads.**

RIPARIAN RIGHTS:

Riparian rights attached to property patented by United States are to be determined by law of the State in which land is situated and rule applies where parties own land bordering on navigable river boundary between two States and land affected lies in different States. *Norton v. Whiteside* 144

Rights attached to property within a State carved out of Northwest Territory not affected by ordinances and statutes relating to that Territory. *Id.*

The mere fact that Congress directed improvement of a new channel in a navigable river does not destroy riparian rights existing under state law and create new ones under Federal Law. *Id.*

RIVERS. See **Public Lands; Riparian Rights.**

ROYALTIES. See **Patents for Invention.**

RULE OF PROPERTY:

Earlier decisions regarding titles and proceedings to establish have become rules of property and should not be overruled. *Elzaburu v. Chaves* 283

RULES OF CONDUCT:

Where rule of conduct applies to more than few people impracticable give everyone direct voice in adoption; nor does Federal Constitution require all public acts to be done in town meeting. Individual argument must be limited if government is to go on. *Bi-Metallic Co. v. Colorado* 441

RULES OF COURT:

Contentions wholly frivolous under Employers' Liability Act held frivolous under Rule 6, § 5. *Chicago & R. I. Ry. v. Devine* 52

See **Appeal and Error; Practice and Procedure.**

SAFETY APPLIANCE ACT:

Under Employers' Liability Act of 1908 breach of Safety Appliance Act on part of carrier does not operate to deprive it of defenses of contributory negligence or assumption of risk

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unless the breach contributes to the injury. *Atchison, Topeka & Santa Fe Ry. v. Swearingen*. 339

Supplementary act of 1910 relieves carrier from statutory penalties while hauling defective car to repair shop, but not from liability for injury in connection with such hauling. *Great Northern Ry. v. Otos* 349

Car from another State merely delayed in State of destination and finally reaching destination not thereby withdrawn from operation of act. *Id.*

See **Employers' Liability Act.**

SALES. See **Conditional Sale.**

SEAMEN:

Subsequent legislation excluded seamen engaged in the coastwise trade from the exemption from attachment of wages provided by § 4536, Rev. Stat.; and so held as to seamen engaged in trade between Hawaiian Islands. *Inter-Island Navigation Co. v. Byrne*. 459

SECRETARY OF INTERIOR:

While not conclusive, construction of act of Congress relative to Indian allotments in course of actual administration by Secretary is entitled to great weight and should not be overruled without cogent reason. *La Roque v. United States* 62
The act of April 23, 1904, limiting and defining authority of Secretary in regard to cancelling patents for trust allotments does not restrict or define power or jurisdiction of court in that respect. *Id.*

Congress in its plenary control of Indians had power to pass act of June 25, 1910, vesting in Secretary determination of heirs of allottee Indians dying within trust period. *Hal-lowell v. Commons* 506

Congress by act of June 25, 1910, restored to Secretary power taken from him by acts of 1901 and 1904 to determine legal heirs of allottee Indians dying during restriction period. *Id.*
By passing act June 25, 1910, vesting power to determine legal heirs of allottee Indians in Secretary, Congress evinced change of public policy and its opinion as to better manner of preserving rights of Indians. *Id.*

Under act June 25, 1910, Secretary has power to ascertain legal heirs Omaha Indian dying during restriction period of allotment under act of August 7, 1882, and decision final. *Id.*

See **Contracts.**

SECRETARY OF NAVY. See *Contracts*.

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SECRETARY OF WAR. See *Contracts*.

SHERMAN ACT. See *Anti-trust Act*.

SHIRLEY AMENDMENT. See *Pure Food and Drugs Act*.

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SOUTH CAROLINA:

Statute making delivering carrier responsible for damages to foods on through bills of lading of intrastate shipments not voluntarily received does not deprive delivering carrier of property without due process of law. *Atlantic Coast Line v. Glenn*. 388

Statute making delivering carrier responsible for damages, having been construed by highest court of State as not requiring carrier to accept on through bills of lading from other carriers, constitutionality of a statute requiring acceptance and making delivering carrier responsible for damages on other lines not determined. *Id.*

SOUTH DAKOTA:

Requirement in state constitution that all taxes on property of corporations be assessed and levied as near as may be as on property of individuals violated by giving controlling effect to gross income of the former while assessing latter at actual value. *Johnson v. Wells Fargo*. 234

Although taxing statute fair on face, its administration illegal by adoption of unequal methods of assessing earnings of express companies thereunder. *Id.*

SOVEREIGNTY:

United States as a government is invested with all attributes of sovereignty and has character of and powers of nationality, especially those concerning relations with foreign powers. *Mackenzie v. Hare*. 299

STARE DECISIS:

Earlier decisions regarding title and proceedings to establish become rules of property and should not be overruled. *Elzaburu v. Chaves*. 283

That the power of Congress over foreign commerce is complete has been so thoroughly settled by decisions of this court that to question it is frivolous. *Weber v. Freed*. . . . 325

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- Exclusive operation of Employers' Liability Act over its subject to exclusion of state statutes conclusively established by decisions of this court. *Chicago & Rock Island Ry. v. Devine*. 52
- Schillinger v. United States*, 155 U. S. 163, subsisting authority for rule that Court of Claims has not jurisdiction of claim founded on wrongful act of officer of United States. *Basso v. United States*. 602

See **Res Judicata**.**STATES:**

- Legislative power:* State may by direct legislation or through authorized municipalities declare emission of dense smoke in populous neighborhoods nuisance and restrain, and unless arbitrary, such regulations not violative of Fourteenth Amendment. *Northwestern Laundry v. Des Moines*. 486
- Legislature may constitute drainage districts and define boundaries or delegate authority to local administrative bodies and unless palpably arbitrary and plain abuse of power does not deny due process. *Myles Salt Co. v. Iberia Drainage District*. 478
- Rule that State may recognize degrees of evil, and adopt legislation accordingly, applies to matters concerning which State may legislate. *Truax v. Raich*. 33
- Congress within its sphere is paramount over States and courts cannot, where will of Congress plainly appears, allow substantive rights to be impaired under name of procedure. *Atlantic Coast Line v. Burnette*. 199
- State has very broad powers over municipalities and may exercise them in many ways giving rise to inequalities between municipalities without violating due process or equal protection provisions of Fourteenth Amendment. *Stewart v. Kansas City*. 14
- General provisions of the Fourteenth Amendment embody fundamental conceptions of principles of justice and do not, nor do other provisions of the Constitution, prevent State from adopting public policy to meet special exigencies such as establishing drainage districts. *O'Neill v. Leamer*. 244
- Regulation of common carriers:* This court having held that by Carmack Amendment initial carrier liable for shipments on through interstate commerce over its own and connecting lines, same reasoning applies to power of State to make delivering carrier liable on through intrastate ship-

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ments even if loss occurs on lines other than its own. <i>Atlantic Coast Line v. Glenn</i>	388
Exclusive operation of Employers' Liability Act over its subject to exclusion of state statutes conclusively established by decisions of this court. <i>Chicago & Rock Island Ry. v. Devine</i>	52
A state court does not deny a Federal right to a carrier railroad company by holding it strictly to its own terms in connection with mileage books. <i>Southern Railway v. Campbell</i>	99
<i>Police power</i> : Police power while not to be arbitrarily exercised is one of most essential powers of State and least limitable and there is imperative necessity for its existence. <i>Hadacheck v. Los Angeles</i>	394
May prescribe duties of hotel keepers regarding fires; and police statute expressing rules in general terms does not lack due process of law. <i>Miller v. Strahl</i>	426
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<i>Taxation by</i> : Taxation without jurisdiction denies due process of law and this rule applies to assertion of authority on the part of the State to exact license tax for acts done beyond its sphere of control. <i>Provident Savings Ass'n v. Kentucky</i>	103
State may in discretion lay assessments for public work either as to position, area, frontage, market value or estimated benefits, and unless flagrant abuse of power does not amount to deprivation of property without due process of law. <i>Houck v. Little River District</i>	254
May fix basis directly or by appropriate legal proceeding of taxation or assessment for proper governmental outlay; unless arbitrary, due process provision of Fourteenth Amendment not violated. <i>Id.</i>	
Action of local administrative body arbitrarily including land not possibly benefited in drainage district solely for purpose of obtaining revenue therefrom amounts to deprivation of property without due process of law. <i>Myles Salt Co. v. Iberia Drainage District</i>	478
State cannot continue, after insurance company has withdrawn from State, to exact license tax on premiums of residents paid outside of State, as right to continue contracts does not depend on consent of State. <i>Provident Savings Ass'n v. Kentucky</i>	103
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any power to raise revenue and State may impose taxes and assessments for improvements already made without violating due process or equal protection provision of Fourteenth Amendment, even though proceeds be used for other purposes. *Wagner v. Baltimore*. 207

So far as Federal Constitution concerned, State may defray expenses of improving political subdivisions from state funds raised by general tax or may apportion burdens among municipalities or create tax districts either directly by legislature or by delegated authority. *O'Neill v. Leamer*. 244

Regulation of corporations: State may restrict foreign corporation from doing business within State so long as interstate commerce not burdened. *Interstate Amusement Co. v. Albert*. 560

State has no authority to say telegraph company may not operate lines constructed over postal routes within its borders. *Essex v. New England Telephone Co.*. 313

Post Road Act declares in interest of commerce and convenient transmission of intelligence of Government of United States and its citizens that erection of telegraph lines shall so far as state interference is concerned be free to all submitting to its conditions. *Id.*

Power to regulate labor: May not deprive admitted aliens of right to earn living or require employers only to employ citizens. *Truax v. Raich*. 33

In order to protect citizens of United States in employment against non-citizens States may not require employers to employ only specified percentage of aliens—such a statute—as in Arizona of December 14, 1914, denies aliens equal protection of laws even though allowing employment of some aliens. *Id.*

Alien admitted to United States under Federal law has privilege of entering and abiding in any State and as inhabitant of State is entitled under Fourteenth Amendment to equal protection of law as “any person within the jurisdiction of the United States” and this includes right to earn living which was purpose of amendment to secure. *Id.*

It belongs to State as guardian and trustee for its people to prescribe conditions upon which public work shall be done for it and its municipalities; and this being public policy courts are not concerned therewith. *Heim v. McCall*. 175

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Neither a municipality nor one contracting therewith, nor a

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- taxpayer on its behalf can assert proprietary rights of an individual against the State in determining who shall be employed on public works authorized by the State. *Id.*
- Suits against:* Suit against officers of State about to proceed wrongfully to enforce unconstitutional state statute to complainant's injury not suit against State. *Truax v. Raich* . . . 33
- Generally:* United States has power to prohibit false personation of its officers or false assumption of being an officer or holding a non-existent office, and legislation to that end does not interfere with or encroach on powers of States, and § 32, Criminal Code, is not unconstitutional. *United States v. Barnow* . . . 74
- Provisions in ordinances and statutes relating to Northwest Territory do not control riparian rights enjoyed under law of State carved out of that Territory. *Norton v. Whiteside* 144
- Riparian rights attached to property patented by United States determined by law of State even where parties own land on opposite side of boundary river. *Id.*
- The mere fact that Congress directs improvement of new channel in navigable river does not destroy riparian rights existing under state law and create new ones under Federal law. *Id.*
- Plenary power of Congress over foreign commerce not affected by fact that articles imported are to be used for purpose under state control. *Weber v. Freed* . . . 325

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- By state:* State may fix basis of taxation for governmental outlay by direct legislation or by appropriate legal proceeding, as in Missouri drainage statute. *Houck v. Little River District* . . . 254
- So far as Federal Constitution concerned, State may defray expense of improving political subdivisions from state funds raised by general tax or may apportion burdens among municipalities or create tax districts either directly by legislation or by delegated authority. *O'Neill v. Leamer* . . . 244

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- State cannot continue to exact license tax on premiums on lives of residents after company has withdrawn from State, the premiums being paid outside of State, as right to continue contracts does not depend on consent of State. *Provident Savings Ass'n v. Kentucky* 103
- Taxation without jurisdiction denies due process of law and this rule applies to assertion of authority on the part of the State to exact license tax for acts done beyond its sphere of control. *Id.*
- Requirement in state constitution of South Dakota that all taxes on property of corporations be assessed and levied as near as may be as on property of individuals is violated by giving controlling effect to gross income of corporation property while assessing individual property at actual value. *Johnson v. Wells Fargo* 234
- Special assessments:* Power of taxation not to be confused with eminent domain. *Houck v. Little River District* 254
- Not necessary to show special benefits to lay a tax which is an enforced contribution for payment of public expenses. *Id.*
- Where classification of property to be improved and assessments are fixed by the statute and specified sum fixed ratably by area, notice and opportunity to be heard not essential and due process clause not violated in absence of abuse of power. *Wagner v. Baltimore* 207
- No abuse of legislative power violating due process provision of Fourteenth Amendment when there is no disproportion between assessment fixed and benefits conferred, as in case of Maryland statutes of 1906 and 1908 imposing special tax for paving streets in Baltimore. *Id.*
- Constitutional validity:* Assessments for public work may be laid either as to position, area, frontage, market value or estimated benefits, without violating due process provision of Fourteenth Amendment, unless flagrant abuse of power. *Houck v. Little River District* 254
- Initial fixed reasonable tax per acre laid by Missouri statute on tax district for preliminary expense of starting work of drainage district not arbitrary action amounting to deprivation of property without due process of law. *Id.*
- Missouri statute authorizing imposition of initial tax in force prior to formation of drainage district not retrospective in violation of Fourteenth Amendment. *Id.*
- Fourteenth Amendment does not interfere with discretion-

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- ary power of State to raise revenue and may impose taxes and assessments for improvements already made even though proceeds be used for other purposes, without violating due process or equal protection provisions. *Wagner v. Baltimore* 207
- Imposing taxes on premiums collected on life insurance policies of residents of Kentucky in pursuance of statute of that State, after company ceased doing business, unconstitutional denial of due process of law. *Provident Savings Ass'n v. Kentucky*. 103
- Statute requiring counties to reimburse cities of first class but not of other classes for rebates allowed for prompt payment of taxes not unconstitutional under due process or equal protection provision of Fourteenth Amendment. *Stewart v. Kansas City*. 14
- Order of Colorado board of equalization increasing valuation of all taxable property in Denver, valid under state law, not violative of Fourteenth Amendment because opportunity to be heard not given city or taxpayers. *Bi-Metallic Co. v. Colorado* 441
- Enjoining collection:* Where valuation method of assessment so unwarranted by law as to amount either to fraud on or gross mistake amounting to fraud on constitutional rights of the person taxed equity should enjoin enforcement of tax. *Johnson v. Wells Fargo* 234
- After collection of tax has been enjoined on ground that constitutional rights have been violated, imposition of similar tax on similar assessments amounts to continuing violation of constitutional rights affording ground for equitable relief. *Id.*
- Failure to resort to state remedies sufficiently broad enough ground to sustain judgment of state court refusing to enjoin collection of taxes. *Mellon Co. v. McCafferty*. 134
- Valuation for:* Although a taxing statute may be fair on its face its administration may by adoption of unequal methods of valuation be illegal; and so as to given earning assessments of express companies under South Dakota statute. *Johnson v. Wells Fargo*. 234
- Exemptions:* Provision in legislative charter exempting from taxation property owned and actually used by corporation construed strictly under rule that such exemptions do not pass by transfer. *Morris Canal Co. v. Baird*. 126
- Property exempted under charter during its actual posses-

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sion and use by exempted company ceases to be exempted if leased to another company even though subject to State's right to purchase and eventual reversion to State. *Id.*

Generally: Granting a charter for a taxing district not contract that the laws it was created to administer will not be changed. *Houck v. Little River District*. 254

Where constitutionality of method of taxation under state statute is questioned the Federal court is not bound by the decision of the state court upholding such method if question of constitutionality was not raised in the case decided by the state court. *Johnson v. Wells Fargo*. 234

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TELEGRAPHS:

State has no authority to say telegraph company may not operate lines constructed over postal routes within its borders, nor may municipality arbitrarily exclude such lines from its streets, but may impose reasonable restrictions and regulations. *Essex v. New England Telephone Co.*. 313

Post Road Act declares in interest of commerce and convenient transmission of intelligence of Government of United States and its citizens that erection of telegraph lines shall, so far as state interference is concerned, be free to all submitting to its conditions. *Id.*

Rights of telegraph company under Post Road Act which would be violated by threatened arbitrary action of municipality, may be protected by equity, but injunction must not prevent municipality from subjecting location and operation of lines to reasonable regulations. *Id.*

Municipality may waive rights and by acquiescence for long period of years in maintenance of poles and expenditures by telegraph company be estopped or regarded as having waived rights. *Id.*

See **Army and Navy.**

TENNESSEE:

Statute requiring foreign corporations to take specified steps in order to maintain action not unconstitutional. *Interstate Amusement Co. v. Albert*. 560

TERRITORIES:

As an organized political division of United States, a Territory only possesses such powers as Congress confers upon it and a legislature cannot provide for escheat unless author-

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ized, but authority to legislate on all rightful subjects of legislation includes escheats, as in case of Organic Act of Washington Territory. *Christianson v. King County* 356

In determining extent of power delegated by Congress to Territory under Organic Acts and validity of a series of acts of the territorial legislature, it is significant as to extent of authority if Congress until statehood never disapproved any of such series. *Id.*

Subject to general scheme of local government, defined by Organic Act and special provisions it contains and right to revise, alter and revoke, legislatures of Territories have been entrusted with enactment of entire system of municipal law of Territories. *Id.*

In appeals from territorial courts this court follows and sustains application of local law to facts made by courts below unless constrained to contrary by sense of clear error; and so held in divorce case for Philippine Islands. *De Villanueva v. Villanueva* 293

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TIME:

Rights and remedies of trustee in bankruptcy accrue at time petition is filed. *Bailey v. Baker Ice Co* 268

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TORTS:

Rule that Court of Claims has not jurisdiction of actions founded on torts based on policy imposed by necessity that governments are not liable for unauthorized wrongs inflicted by officers on citizens, even though in discharge of official duties. *Basso v. United States* 602

Congress has wisely reserved to itself the right to give relief where claim founded on torts of officer of United States. *Id.*

TRANSPORTATION. See **Carriers; Interstate Commerce.**

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The equality of rights assured by Arts. I and II of the Treaty with Italy of 1871 is in respect of protection and security for person and property. *Heim v. McCall* 175
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and preference be given to citizens of New York not unconstitutional under privilege and immunities, due process or equal protection clauses, nor does it violate treaty with Italy of 1871. *Id.*

As to rights of aliens under treaties with Italy and other respective nations, see *Truax v. Raich* 33

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United States as a government is invested with all attributes of sovereignty and has character of and powers of nationality, especially those concerning relations with foreign powers. *Mackenzie v. Hare*..... 299

Under the Constitution every person born in the United States is a citizen thereof. *Id.*

The power to control immigration—to admit or exclude aliens—is vested in Federal Government. *Truax v. Raich* .. 33

Post Road Act declares in interest of commerce and convenient transmission of intelligence of Government of United States and its citizens that erection of telegraph lines shall, so far as state interference is concerned, be free to all submitting to its conditions. *Essex v. New England Telephone Co.* 313

Not liable, as charterer of vessel, for damages due approximately to marine risk or when rendering aid to another vessel of United States, even though case be hard one. *New Orleans S. S. Co. v. United States*. 202

Only the United States can maintain bill in equity for annulment of patent on ground of procurement by fraud. *Briggs v. United States*..... 48

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WAREHOUSEMEN:

Whether responsibility of interstate carrier as warehouseman of goods from another State not called for in 48 hours after arrival is measured by valuation in bill of lading is Federal question. *Cleveland & St. Louis Ry. v. Dettlebach* 588

Under Act to Regulate Commerce, as amended by the Hepburn Act of 1906, transportation embraces all facilities connected with shipment including storage after arrival. *Id.*

Valuation in bill of lading of goods shipped in interstate commerce and limitation of carrier's liability made for purpose of obtaining lower rate is, under Carmack Amendment, valid and binding on shipper and applies to carrier as such while goods are in transit and as warehouseman while holding goods after arrival. *Id.*

Under Louisiana Uniform Warehouse Receipts Acts, 1908, if owner permits another to have custody of goods or if negotiable warehouse receipts to latter or bearer, it is a representation of title and *bona fide* purchaser protected notwithstanding breaches of trust or violation of agreement by apparent owner. *Commercial Bank v. Canal Bank* 520

One not having title to chattels cannot transfer title unless owner gives authority or is estopped, nor can former in absence of such authority or estoppel transfer title by warehousing the goods and endorsing receipts; but if owner clothes him with apparent ownership by permitting him obtain negotiable warehouse receipts therefor, *bona fide* purchaser for value, protected. *Id.*

WASHINGTON:

Holding by highest court of State that State Workmen's Compensation Act established comprehensive plan for relief of workmen included therein regardless of fault, is exclusive notwithstanding it did not expressly repeal statute giving right of action for death, is binding on Federal courts; and so held as to Washington statute. *Northern Pacific Ry. v. Meese* 614

On record in this case it does not appear that Washington Workmen's Compensation Act is unconstitutional as denying equal protection of the law. *Id.*

WASHINGTON TERRITORY:

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A Territory possesses only such powers as Congress confers upon it, and authority to legislate on all rightful subjects of legislation includes escheats, as in case of Organic Act of Washington Territory. *Christianson v. King County* 356

Subject to general scheme of local government, defined by Organic Act and special provisions it contains, and right to revise, alter and revoke, legislatures of Territories have been entrusted with enactment of entire system of municipal law of Territories. *Id.*

Under the law of Washington Territory the property escheated and passed under decree of probate court to county in which it was located and that decree, being in accord with valid law by a court of jurisdiction in a proceeding *in rem* with opportunity to be heard, was valid, could not be attacked collaterally and there having been opportunity to be heard it did not deny due process of law. *Id.*

Where Territory has authority to establish rule as to escheat it has power to establish tribunals with jurisdiction and procedure, and if other proceedings are established, as in Washington, by probate court, decree of office found is not necessary. *Id.*

Provisions for escheat for failure of heirs have proper relation to matters embraced in law establishing probate courts as in statutes of Washington Territory which are not invalid because title of probate act not broad enough to cover escheats. *Id.*

Prohibition in Organic Act of Washington of 1853 against interference with primary disposal of soil had reference to public lands of United States and did not relate to escheat of land for failure of heirs. *Id.*

Decree of probate court of King County, Washington, sufficient to sustain escheat as being within its jurisdiction. *Id.*

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